PART IV

Section 1—C

GENERAL STATUTORY RULES AND STATUTORY ORDERS ISSUED BY THE CENTRAL GOVERNMENT AND ORDERS MADE BY THE PRESIDENT AND REPUBLISHED BY THE STATE GOVERNMENT.

ELECTION COMMISSION, INDIA.

NEW DELHI,

Dated the 21st October, 1967.

NOTIFICATION

No. 82/MY-/4/67 .—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 30th August, 1967, by the High Court of Mysore at Bangalore in Election Petition No. 4 of 1967.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Dated the 30th day of August 1967.

Before

The Hon'ble Mr. Justice K. R. Gopivallabha Iyengar.

Election Petition No. 4 of 1967.

C M. Armugam, son of Muniswamy. Hindu, Adi Dravida, aged about 40 years, residing in 1st Cross Road, Robertsonpet, K. G. F. .... *Petitioner.*

By Sri V.K. Govindrajulu.

Vs.

1. S. Victor Rajagopal *alias* S. Rajagopal, son of Sahadevan Indian Christian Protestant, aged about 35 years, residing at No. 41, Chelly's Block, Marikuppam, K. G. F.

2. G. Muniyappa, son of Chinnappa, Hindu, Adi Dravida aged about 50 years, residing in Giddegowdanaha li, Marikuppam, K. G. F.

3. A. Muniswamy, son of Avalappa, Hindu, Adi Dravida, aged about 46 years, residing in third cross road, Robertsonpet, K. G. F.

4. Muniswamy, son of Mari, Indian Christian, aged about 47 years, residing in S. T. Block, Oorgaum Post. K. G. F. .... *Respondents.*

Respondent No. 1 by Sri V. Krishnamurthy, Sri V. Tarakaram and Sri V. S. Sadasivan and Respondents 2, 3 and 4 being absent and unrepresented, treated *ex parte.*

Election Petition filed by the Petitioner under Section 81 of the Representation of the People Act, 1951 challenging the election of the Respondent No. 1 to the Mysore Legislative Assembly for the reserved seat of Kolar Gold Fields Constituency in the General Elections held in February, 1967 and seeking an order that the election of the 1st respondent for the reserved seat of Kolar Gold Fields Constituency is declared void and the petitioner is declared as duly elected to the Mysore Legislative Assembly from the said Constituency and praying for costs of this Petition and such other reliefs Court deems fit to grant.

This Election Petition coming on for trial on Wednesday 19th, Thursday 20th, 26th Wednesday, Thursday 27th, Friday 28th, Monday 31st, days of July, 1967 and Tuesday 1st, Wednesday 2nd, Thursday 3rd, Friday 4th, Monday 7th, Tuesday 8th, Wednesday 9th, Thursday 10th, Friday 11th, Monday 14th, Wednesday 16th, Thursday 17th, Friday 18th, days of August, 1967, in the presence of Sri V. K. Govindarajulu Advocate for the Petitioner and Sri V. Krishna Murthy, Sri V. Tarakaram and Sri S. V. Sadasivan, Advocates for Respondent No. 1. Respondent Nos. 2 to 4 treated as *ex parte* and this Election Petition having stood over for consideration, the Court made the following Order this 30th day of August, 1967.

ORDER.

The petitioner is a member of the Scheduled caste, being an Adi Dravida under Item 24 of Part VIII of the Schedule attached to the 'Constitution' (Scheduled Castes) Order, 1950, issued by the President of India in exercise of the powers vested in him under Art. 341 (1) of the Constitution. The petitioner filed his nomination paper as a candidate for election as a Member of the Mysore Legislative Assembly at the General Election held on the 15th of February 1967, from the Kolar Gold Fields Constituency, for the seat reserved for candidates from Scheduled Castes. Respondents 1 to 4 also filed their nomination papers in respect of the same reserved seat. When the nomination papers came up for scrutiny on 21st January 1967, the petitioner raised an objection that the first respondent was not an Adi Dravida but an Indian (Protestant) and had no qualification to stand as a candidate for election from the seat reserved for Scheduled Castes. The Returning Officer overruled the objection and accepted the nomination paper of the first respondent as valid. Respondents Nos. 2, 3 and 4 withdrew their candidature and therefore the petitioner and the first respondent (hereafter referred to as respondent) were left as the only contestants in the elections held on 15th February 1967. The respondent was declared elected to the Mysore Legislative Assembly as he had secured a larger number of votes than the petitioner. The petitioner has, therefore, filed this Election Petition under Section 81 of the Representation of the People Act, 1951 (hereafter referred to as the R. P. Act).

The petitioner alleges that the respondent was an Indian Christian (Protestant) on the date of the filing of his nomination paper and therefore was not qualified to fill the reserved seat from the Kolar Gold Fields Constituency. It is further alleged that the respondent who was born as an Adi Dravida Hindu became converted to Christianity in 1949 and thereby abandoned his original religion. He thereafter professed the Christian Religion and therefore he cannot be deemed to be a member of the Scheduled

Caste under paragraph (3) of the Constitution (Scheduled Castes) Order, 1950. It is stated that the name of the respondent was S. Rajagopal originally and after conversion to Christianity the respondent's name was changed to S. Victor Rajagopal. It is also stated that on the representation that he was an Indian Christian professing Christianity, he secured admission in the Voorhees Christian Hostel at Vellore which is exclusively intended for members of the Christian Community, his name being given then as Victor Rajagopal, and he also joined the Voorhees High School at Vellore giving his religion as Indian Christian. The petitioner further states that after leaving the High School at Vellore, the first respondent returned to Kolar Gold Fields area and sought employment in the Mysore Mines in November, 1951, giving his religion as Indian Christian and that the same has been entered in the Service Cards of the respondent, and that the representation that he is an Indian Christian has been made on several occasions during his Mining Service. A reference is also made in the petition to the activities of the respondent as Organizer of a Natakasabha called Kavingar Natakasabha K. G. F., the Organizer's name being mentioned as Victor Rajagopal. It is alleged in the petition that the respondent being a Christian took interest in the Christian population of the Kolar Gold Fields and in particular in the Conference of Christians held under the auspices of the Kolar Gold Fields Christian Federation held in January 1967. In the said Conference it is stated that only Christians took part and no Hindu participated in the proceedings. It is further stated that in the said Conference the respondent sponsored the cause of Christian converts from Scheduled Castes urging the Government to extend to such converts the same political privileges as are guaranteed under the Constitution to Scheduled Caste Hindus. On these grounds, the petitioner contends that the respondent having abandoned his caste as an Adi Dravida and Religion as a Hindu and having professed Christianity, he incurs the disqualification under paragraph (3) of the Constitution (Scheduled Castes) Order, 1950 which provides that no person who profess a Religion

different from the Hindu or the Sikh Religion, shall be deemed to be a Member of the Scheduled Castes; thus, the respondent being not qualified to stand as a candidate for election as a member for the Reserved Seat, the election is liable to be declared void under Section 100 (1)(a) of the R. P. Act. The petitioner in paragraph 16 of the petition further submits that as he was the only candidate who took part in the elections, after the withdrawal of respondents 2, 3 and 4, he is entitled to be declared as duly elected.

Respondents 2, 3 and 4 have not put in their appearances and are treated *ex-parte*.

The contesting respondent, *viz.*, the first respondent, in his written statement asserts that his name is S. Rajagopal and not S. Victor Rajagopal. He denies that he is an Indian Christian (Protestant) and claims to be an Adi Dravida Hindu belonging to the Scheduled Caste. He also denies the allegation that he is not qualified to fill the reserved seat of the Constituency It is denied that he became a convert to Christianity in the beginning of 1949. He states that he was born on 10th April 1932 as an Adi Dravida Hindu at Kolar Gold Fields and gives details of his having studied at Mankuppam and Kolar Gold Fields and also about the fact of his arrest in 1948 and detention in the Central Jail for six months, After his release from jail in 1949, he avers that he took shelter near his native place Lalapet which is about five miles from Ranipet and as he wanted to continue his studies in Voorhees High School at Vellore, he contacted one C. A. Joseph who was then the Warden of the Christian Hostel and appealed to him to give his assistance for admission into the said High School and also to be taken as a free boarder. He was admitted to the said institution and he stayed there in the institution for barely two months and thereafter he returned to Kolar Gold Fields. He alleges that during the year 1949 he was a minor. He produces an extract of the Admission Register furnished by the Head-Master of the Voorhees High School which is marked as Exhibit R-17 in the case, which shows the caste of the

applicant as Adi Dravida. He denies that his name was changed to S. Victor Rajagopal and that he intentionally abandoned the Hindu Religion and he openly declared himself as Indian Christian professing Christianity. In paragraph 6 of his written statement he states that he did not voluntarily give his name as Victor S. Rajagopal while joining the Voorhees High School nor did he represent that he was an indian Christian while joining the Voorhees Christian Hostel. In this connection the respondent alleges that late C. A. Joseph who took pity on him when he was externed from the State of Mysore and sought shelter from him, has set out that he was satisfied that the respondent was a Christian and that might have been for the purpose of the respondent being easily admitted as a free-boarder in the Hostel, as the Christian Hostel was restricted to Christians only. The respondent submits that this note in the records that he is an Indian Christian is not in consequence of his change of his religion and getting himself converted to Christianity. He asserts that he does not believe in the Gospel and that he is not a member of the Christian Community. He further contended that whatever late C. A. Joseph might have done, does not bind him.

With reference to his entry into service in November 1951 in the Kolar Gold Fields Mines, the respondent states that he never voluntarily gave his Religion as an Indian Christian. He also denies that he ever voluntarily declared his religion as Indian Christian at any stage during his services. The respondent submits that he contested the Elections for the Mysore Legislative Assembly from the Kolar Gold Fields Constituency seat reserved for candidates from Scheduled Castes in 1962 and the petitioner was one of the opponents. It is alleged by the respondent that when he decided to contest the elections in 1962, he wrote to the Mining Authorities on 8th September 1961 that the entry in the Service Records relating to him contained a wrong description with regard to his caste and religion and sought for the amendment of the record, which was accordingly done. The word "Christian" was deleted from the Service

Records. The respondent contends that the petitioner was fully aware of this fact, even during the 1962 Elections, and that the petitioner at that time did not contest the election of the respondent as a Member of the Mysore Legislative Assembly. He further states that he has married an Adi Dravida lady in 1954 and has 5 children by her; that he along with his brothers and his father continues to live together. For the reason that the petitioner did not contest either the nomination or the election of the respondent in the 1962 Elections, the respondent states that the petitioner is estopped from filing this Election Petition.

With reference to the Christian Conference held under the auspicies of the Kolar Gold Fields Christian Federation, the respondent states that he was invited to address on Minority Rights as he was a Sitting Member of the Legislative Assembly at that time.

The respondent further contends that notwithstanding the alleged conversion into Christianity in 1949, he has been at all material times, at least from the year 1954 when he was married to an Adi Dravida lady in the Hindu form, professing the Hindu Religion, as a Member of the Scheduled Castes. It is further stated that he worships in Hindu temples and that his wife and children continue to observe the Hindu festivals, Hindu customs and that this is enough to say that he is a Member of the Scheduled Castes and that these facts in any event constitute conversion back to Hindu Religion even if it were necessary. It is also stated that the entire Adi Dravida community in Kolar Fields has always accepted the respondent and the members of his family as Adi Dravida and therefore both by professing and practice and acceptance by the community at large and also by religious belief he is a member of the Hindu Community and has been a member of the Scheduled Caste.

With regard to the participation as an Organizer of the Kavingar Natakasabha, it is admitted that the respondent was one of the Organizers of the said Natakasabha but he states that he does not know why the Organizers of the Natakasabha introduced "Victor" in describing him and as

it was not of importance he took no serious notice of it. He therefore submits that the petitioner is not entitled to any relief and that his petition is liable to be rejected with costs.

On the basis of the above pleadings the following issues were framed :—

1. Does the petitioner prove that on the date of election, the respondent No. 1 was an Indian Christian (Protestant) by conversion and not a member of the Scheduled Caste, (Adi Dravida), professing Christian Religion and therefore not qualified to stand for election to the Mysore Legislative Assembly as a candidate for the seat reserved for Scheduled Castes from the Kolar Gold Fields Constituency and his election should be declared void under Section 100 (1) (a) of the Representation of People Act, 1951?

2. Is the petitioner estopped from contending that the respondent is an Indian Christian as set out in para 10 of the Written Statement?

3. Even if it is true that respondent No. 1 got himself converted to Christianity, does the respondent prove the facts and the circumstances set out in para 11 of the Written statement and do they constitute in fact and in law conversion back to Hindu religion as alleged; and is it enough in law to give him the benefit of the Constitution (Scheduled Castes) Order 1950?

4. Is the petitioner entitled to be declared elected if the finding on Issues 1, 2 and 3 are in favour of the petitioner?

5. To what relief is the petitioner entitled?

Sri V. K. Govindarajulu appeared for the petitioner and Sri V. Krishna Moorthy appeared for the respondent.

At the outset it should be recorded that Sri V. K. Govindarajulu, the learned counsel for the petitioner,

does not press the fourth issue, even if the finding on the first issue be in his favour. Therefore, the petitioner cannot be declared to be elected as sought for by him in his petition.

Sri V. Krishna Moorthy, the learned counsel for the respondent has stated that he does not press the second issue and therefore it is not necessary to consider the question as to whether the petitioner is estopped from contending that the respondent is an Indian Christian as set out in paragraph 10 of his petition.

Therefore, the only two issues that arise for consideration are Issues Nos. 1 and 3. Elaborate and detailed arguments are addressed by both counsel on facts and law.

The petitioner has examined 12 witnesses in support of his case while the respondent has examined 16 witnesses. The parties have also produced records from the Voorhees Christian Hostel and the High School, the Mining Authorities and other documents and they are marked as exhibits P-1 to P-26 and R-1 to R-39.

The history of the respondent upto February 1949 when he was released from the Central Jail after being there in detention for a period of six months is not of material importance in this case. The petitioner's learned counsel also does not dispute that the respondent was a student in the Mysore Mines Middle School at Marikuppam and later studied at the Kolar Gold Fields High School, Robertsonpet. Exhibit R-8 (entry dated 23rd June 1947 in the Admission Register of the K. G. F. High School) and Exhibit R-7 (Transfer Certificate dated 10th June 1949) bear out the above facts. It is not disputed that the respondent was detained in the Central Jail, Bangalore, from 29th September 1948 upto 7th February 1949. There is also evidence to indicate that he was detained in prison owing to his activities as a Communist when he was a student in the K. G. F. High School when he was 17 years of age. Immediately after his release the respondent went out of the Mysore State and was staying in his native place Lalapet. The respondent states that he had to be outside

the State for a period of six months as there was an order of externment against him directing him not to enter the State for a period of six months. It is during this period that according to the petitioner the respondent got converted to Christianity. The real controversy in regard to the respondent's conduct, therefore starts from February, 1949, *i.e.*, after his release from the Central Jail, Bangalore.

As a background this, the learned counsel for the petitioner at the outset submits that the close relations of the respondent are amongst persons who belong to the Adi Dravida Community professing either the Hindu religion or the Christian religion. There can be no doubt about this. R. W. 15 is the father of the respondent. His parents were Adidravidas and he has four brothers and three sisters. Two of his sisters Periya Kolandai and Perumal are both Christians. His third sister Kannamma is an Adi Dravida and she is married to a Hindu. One Subramaniam is his cousin and he is a Christian. He says that he visits his Christian relations and also takes food with them and his Christian relations also visit him on special occasions and they also take food with him. Rev. Ashirvadam who is examined as R. W. 9 is related to Subramaniam and one Thangaraj who is also a Christian is a brother of Subramaniam. This witness also speaks of one Gambiram who has married his uncle's daughter and he is a Christian. One Yesu is a relation of his and he is a Christian. The respondent also admits in his evidence that he has a few Christian relations. There is ample evidence of a similar character indicating that the respondent's relations are both in the Christian as well as in the Hindu communities This circumstance is brought to my notice to probabalise the baptism of the respondent into the Christian religion. When the respondent was arrested in the year 1948, he was in the Trade Union Movement. Because of his association with the Communists, he was taken to be a Communist and was arrested by the police. He was released from the Central Jail, in February 1949. After his brief stay at Vellore in the Voorhees Christian Hostel and his attending the Christian High School, came back to K. G. F. in 1950.

Then he joined service in the Mysore Mines under a contractor by name Govindan. After serving the Contractor for about 5 or 6 months he got into regular Mining Services as is borne out by Exhibit P-4, the service card relating to him. These are mentioned with a view to support the argument that the respondent was not a person of immature understanding or unable to understand the significance of what he did. He actually became a member of the Communist Party in 1954. From 1953 to 1955 he continued as a member of the Communist Party. He contested as a candidate of the Communist Party for the reserved seat of the K. G. F. Constituency during 1962 Elections, against 4 or 5 other contestants including the petitioner. He succeeded in the said Elections. The respondent further states that it is in August 1961 that the Communist Party decided to put him up as its candidate for Elections, and it is only thereafter that he came to know that his caste was mentioned as Indian Christian in the Service Record Exhibit P-4. He made an application Exhibit P-7 on 8th September 1961 for correction in regard to his caste and the correction was actually made on 19th January 1962. The petitioner's counsel submits that the conduct of the respondent subsequent to his nomination as a Communist in August 1961 and his application for change of his religion in his Service Card are of very little value in this case for the reasons that his subsequent conduct is bound to be in conformity with the decision of the respondent to stand as a candidate for election to the Mysore Legislative Assembly from the reserved seat of the K. G. F. Constituency. Therefore, the petitioner's counsel urges that the conduct of the respondent between 7th February 1949 upto January 1962 is of utmost importance.

It is undisputed that there is no direct evidence of baptism. No Baptismal Register recording baptism of the respondent is produced. No witness who has witnessed the actual baptism has been examined. The contention of Sri Krishna Moorthy, the learned counsel for the respondent, is that the only evidence of baptism can be the Baptismal Register and no other evidence could be

adduced to prove it. He contends that the oral or documentary evidence adduced by the petitioner from which an inference of baptism can be drawn is inadmissible. In support of this contention, he relies on Section 91 of the Evidence Act. He submits that baptism is a matter required by law to be reduced to the form of a document and therefore no evidence can be given in proof of such baptism, except Baptismal Register or secondary evidence, of its contents provided secondary evidence is admissible under the provisions of the Evidence Act. He invites my attention to paragraph 790 on page 346 of Volume 13 of Halsbury's Laws of England, Third Edition wherein it is said:

> "This minister of every parish is required to keep a register of the public and private baptisms performed in the parish. The prescribed particulars of every baptism, whether public or private must be entered in the register book by the minister as soon as possible after its solemnisation, and in no case later than seven days thereafter unless he is unavoidably prevented from doing so."

The learned counsel also invited my attention to certain passages in "Law applicable to Christians" by Paul Appasamy. At page 166 of the said book there is a passage stating that an entry relating to the baptism must be made in the Church Register and a copy of it should be granted to any one who asks for it In regard to the Christianing as a form of faith, he observes that its practice in India is quite different from what it is in England. At page 171 of the same book we find a clear statement that the Christians in India stand on the same footing in the eye of the law as followers of other creeds, and if Christians possess any distinctive rights of their own they possess them as members of worshippers in churches. In India regarding the right of worship, ceremonial or ritual practice in the church and the control of the church, its officials or trustees etc., there has been no legislation for the Christians as such and the rules and principles of English law are not applicable

to Indian conditions. There is evidence in this case to hold that the administration of the Churches in the area with which we are concerned in this case is governed by the Constitution and the Bye-laws made in accordance with the rules laid down in the Constitution of the Church of South India at present. Therefore, what is set out in paragraph 790 of Halsbury's laws of England, Third Edition, Vol. 13, can only be taken as a direction given to the heirarchy of officers of the Christian Ecclesiastical establishment and it cannot be deemed to be law under Section 91 of the Evidence Act. Hence, I cannot accept the contention that no other evidence can be adduced to establish baptism of the respondent to christianity. Sri V. Krishna Moorthy contends that even granting that the respondent was converted before he joined the Voorhees High School in June 1940, even then he was a minor and a minor is incapable of being baptised without the consent of the guardian. Sri V. K. Govindarajulu submits that in the year 1949, the respondent was about 17 years of age. This is beyond question, as the date of the birth of the respondent is given as 10th April 1932 in his written statement. Sri Govindarajulu, further points out that in his deposition before the court the respondent has stated that he was about 15 or 16 years old when he joined the Voorhees High School. This obviously is not correct and is merely an approximate estimate of his age. There can be no doubt that the respondent was a minor in 1949. But there is no law prohibiting the conversion of a minor to Christianity nor any law making the consent of the guardian obligatory. In fact on page 37 of Paul Appasamy's book it is stated:

> "According to leading authorities like Starbuck, Coe and William James who have written on the psychology of religion, the years between fourteen and twenty are especially the years in which the child begins to think for itself and develop a religious sense of its own, begins to find fault with whatever is false in the beliefs in which it has been brought up and to condemn whatever is morally wrong in the practices to which it has

been accustomed .....According to the strict theory of the law, there is nothing to prevent a minor or major from changing his faith by renouncing the creed of his forefathers and adopting a new form of religion."

P. W. 9 who is the Head Master of the Government High School, Thorapadi, Vellore, is a Christian. He states that there is no age limit for convertion. R. W. 10 whose father was a Presbyter of the Good Sheperd Church at Andersonpet, and who himself is the Secretary of the said Church since 1963 and also an elder of the Church states in his cross-examination that he is acquainted with the Constitution and the Bye-laws of the Church which is marked as Exhibit P-26 and there is nothing in it to prohibit the conversion of minors. The respondent has not also placed any material to indicate that there is any particular provisions regulating the conversion of a minor to Christianity. R. W. 10 states that to his knowledge there is no rule prescribing the age of baptism. In view of the above evidence and the absence of any rule, it must be held that it is quite open for the minor to get converted to Christianity. Even the absence of consent of the guardian would be a matter of irregularity on the part of the Ecclesiastical officers in the discharge of their functions and does not affect the efficacy of baptism.

Sri Govindarajulu's contention is that the circumstances in this case coupled with the admissions of the respondent substantiate the petitioner's contention that the respondent must have been baptized in 1949 before he joined the Voorhees Christian Hostel and the High School. He refers to three sets of evidence referring to the various activities of the respondent to support the case of the petitioner that the respondent was baptized as a Christian and that he professed the Christian religion.

The earliest documentary evidence pertains to the admission of the respondent to the Voorhees Christian Hostel and the Christian High School. Exhibit P-10 is an Account Book of the Voorhees Christian Hostel. Exhibit

P-10(a) corresponding to Serial No. 46 on page 51 of Exhibit P-10 relates to the respondent. Exhibit P-10(b) shows the payment of Rs. 15 towards fee. Exhibit P-10 c) is an entry showing that the respondent left the Hostel in the end of July 1949. Exhibit P-11 is an application form in the hand-writing of one C. A. Joseph made as guardian of the respondent for admission to the Voorhees High School. Exhibit P.12 is a Register of Admissions and Withdrawals of Voorhees High School. The respondent admits that he was an inmate of the Christian Hostel from 20th June 1949. He also attended the Voorhees Christian High School. But he submits that he was unaware of the entries made in any of these documents. The entries on page 51 of Exhibit P-10(a), (b) and (c) are in the handwriting of P.W. 9. P.W. 9 has sworn that Exhibit P-10 is the Account Book he maintained. It would be useful at this stage to refer to the oral evidence of the witnesses who speak about the respondents's stay in the Hostel and his conduct while he was an inmate of the Hostel. P.W. 9 states that admission to the Christian Hostel is exclusively confined to boys professing the Christian religion. He further states that it is under the directions of C. A. Joseph that he admitted the respondent to the Hostel. He was in the service of the Voorhees High School as Assistant Head Master in June 1949. He was there from 1949 to 1952. He went in 1952 to the United States for further studies and he has taken M.A. Degree from Ohio University in the United States. He staes that in 1949 he was the Assistant Manager of the Voorhees Christian Hostel attached to the Voorhees High School and one C. A. Joseph was the Manager C. A. Joseph is no more and after his demise in 1956, P W. 9 became the Manager. His association with the hostel dates from 1938. He states that he knows the respondent and that he belonged to Christian religion. He met the respondent in June 1949 when he came for admission to the hostel. It is P.W. 9 who admitted him to the Hostel under instructions from C. A. Joseph who was the person responsible for admitting the inmates to the hostel. This witness also speaks to the respondent having paid a sum of Rs. 15

towards boarding fee and this borne out by the entry Exhibit P-10(a). The witness further states that the name of the respondent when he was admitted to the hostel is entered as Victor Rajagopal as per entry Exhibit P-10 a). P.W. 9 also speaks to Exhibit P-11 an application form filled up by C. A. Joseph and signed by him as guardian. In Exhibit P-11 in the column pertaining to Nationality, religion or caste of the respondent it is mentioned as an Indian Adi Dravida Christian. His residence is mentioned as Christian Hostel. It may also be mentioned that in Exhibit P-11 the name of the parent was written as Shadagopan and later it has been struck off and noted as Sahadevan. This correction is also initialled by C. A. Joseph. P.W. 9 has identified the writing of Joseph in Exhibit P. 11. This witness also speaks to Exhibit P-12 Register of Admissions and Withdrawals of the Voorhees High School. The residence of the respondent is Christian Hostel as per Exhibit P. 12 b). In Col. No. 14 pertaining to religion, the religion of the respondent is mentioned as Indian Christian. Regarding caste it is mentioned as Adi Dravida as per Exhibits P-12(b) and P-12(c). This witness states that when the respondent was admitted to the Christian Hostel, they were satisfied that the respondent was a Christian. This witness further states that the respondent showed him the baptism certificate issued by one Rev. Vedanayakam, the Presbyter of the Yehamur Church. He further states that the respondent told him that he was baptised at Ponni Anicut Festival This Festival is a gathering of Christians from the surrounding Christian Villages and on this occasion conversion to Christanity takes place. This witnesss wears that he was a person who was supervising the religious observances by the inmates of the Hostel. He states that during his stay in the Voorhees Hostel, the respondent was professing the Christian religion and was taking kindly towards the religious activities of the Hostel though he was not quite conversant with all forms of worship or service as he was a recent convert to the Christian religion. He refers to P.W. 1 Singaram Dorairaj and states that in 1949 he was in the Christian Hostel. In the cross examination of this witness he admits that the

baptism certificate which the respondent showed him did not bear the seal of any church. It is contended by Sri V. Krishna Moorthy that the baptismal certificate spoken to by this witness could be based only on the entries in the Baptismal Register and therefore in the absence of the Baptismal Register or any explanation for not summoning it, the evidence of this witness regarding the baptismal certificate should be discarded. He suggests that the evidence of this witness relating to the baptism certificate is a fiction which cannot be believed at all. In the absence of the Register of Baptisms made at Ponnai Anicut, which was within the Jurisdiction of the Yehamur Church of which Rev. Vedanayakam was the Presbyter, the fact of the respondent having shown the baptism certificate cannot be accepted. There would be much force in this argument provided there was evidence that the Baptismal Register was being maintained in the Yehamur Church in respect of conversions effected at Ponnai Anicut, which is wanting.

It is difficult to discard the evidence of this witness relating to the stay of the respondent in the Christian Hostel and Voorhees Christian High School. Similarly the evidence of this witness regarding Exhibit P-11 cannot also be totally discarded. There is nothing to indicate that this witness has any motive to depose falsely to the prejudice of the respondent. Sri Krishna Moorthi stated that the evidence of this witness that the respondent was admitted after baptism at the Ponnai Anicut is not the allegation made in the petition. It is true that in the petition no reference is made to the baptism of the respondent at Ponnai Anicut. The petitioner could not be expected to give particulars of the exact date of conversion or the place of conversion. He depends on the documentary evidence produced before Court for which he attempts to draw an inference that the respondent was converted to Christianity. It is quite possible that at the time the petitioner filed the petition he was unaware of the place of baptism or the existence of the baptismal certificate. Sri Krishna Moorthy attempted to characterize P. W. 9 as an over-enthusiastic witness who speaks with definiteness of his having seen the baptismal certificate, and gives particulars of the same stating that it had been issued by

Vedanayakam. The further attack against the veracity of this witness is the suggestion made in his cross-examination that this witness sought the assistance of the respondent through one James Paul in connection with his application for appointment as the Head Master of the Anglo Indian High School at K.G.F., which this witness has denied. The respondent has further stated in his evidence that P.W. 9 bears illwill against him because he was not inclined to help him in securing the appointment. An attempt is made to discredit this witness by suggesting that there was a charge of misappropriation against him and that is the reason for the termination of his service as Director of Audio Visual Instruction at Vellore. P. W. 9 has denied this suggestion. He has also denied the suggestion that there was any adverse report against him by the National Christian Council, when he sought for appointment as Head Master of the Voorhees High School. In fact he says that he had been appointed as the Head Master of the Voorhees High School but he did not accept it as the terms that existed at the time of his application were not the same as those on which he was offered the appointment as Head Master It is therefore difficult to discard the evidence of this witness. It is significant to note that in his cross-examination the respondent states that he did not make at any time any enquiry about the official career of P W. 9. This renders the suggestions put to P.W. 9 in his cross-examination and denied by him as being without any basis. P W. 1 corroborates the testimony of P W. 9. He is an Adi Dravida Christian and he is now the Presbyter of the Church of South India at Chittoor. He has two churches in Chittoor Town and twenty two churches in the villages under his jurisdiction and he has been the Presbyter for the last 13 years. He was a student of the Vellore High School from June 1947 to April 1950 and he was an inmate of the Voorhees Christian Hostel. He speaks to the respondent having joined the Christian Hostel and studying in the High School at Vellore. It can be gathered from his evidence that the Manager C. A Joseph was being assisted by P. W. 9 who was acting as Warden in the absence of the Manager. It was P.W. 9 who was collecting

the fee and was maintaining the discipline in the Hostel. This witness admits his caste is Adi dravida and his religion is Christianity. He further states that the respondent was being referred to as Victor Rajagopal during his stay in the Hostel. There is nothing suggested as against this witness as to why he should depose falsely against the respondent in this case. In this connection it would be pertinent to note what the respondent has to say with regard to Exhibits P-10 P-11 and P-12 and P.Ws. 9 and 1. He denies that the entries Exhibits P-10 (a), P-10 (b) and P-10 (c) or any other entries corresponding to Serial No. 46 in Exibit P-10 were made in his presence. He denies that he gave his name as Victor Rajagopal to P. W. 9, and that he was called by that name when he was in the Hostel. He admits that he adhered to the discipline in the Hostel but denies that he offered any prayer before Jesus Christ or that he believed in the Gospel. He denies complete knowledge of P. W. 9 being associated with the Christian Hostel. He states that he had not seen him and he has not given any particulars to him. Similarly he denies all knowledge about P.W. 1. With reference to P. W. 9 he states that P. W. 9 was introduced to him by one James Paul and P. W. 9 requested him to recommend his case to be appointed as Head Master of the Anglo Indian High School at Nandidurg and that he told P. W. 9 that he could support only local candidates and that he could not be of any use to him. James Paul is not examined though he was summoned and attended the Court for a few days. Regarding P. W. 1, I find nothing suggested to him as to why he is giving evidence which is helpful to the petitioner and not in accord with the respondent's case nor has the respondent stated anything against P. W. 1. The respondent deposes that he does not know even now if the Voorhees Christian Hostel is meant exclusively for Christians It must be noted that in paragraph 6 of the written statement he states that the Christian Hostel was restricted to Christians. He is unable to say how long he stayed in the Hostel, or the religious discipline imparted in the Hostel. He denies that any prayers were held in the Hostel during the course of the day. In fact he says that

even on Sundays there were no prayers by the inmates of the Hostel and no religious instructions were imparted to them. He does not remember if C.A. Joseph was conducting the prayers in the Hostel. In any event he admits that he was one with the other inmates in the Hostel in the activities connected with it. He is not aware of any fee being collected from the inmates of the Hostel. He further avers that there was no occasion for him to tell C. A. Joseph whether he was a Hindu or a Christian. He states that when he joined the Hostel, no one asked him particulars regarding his father's name, religion, caste or community or any other particulars. With reference to Exhibit P-11 he says that he never gave any particulars entered in Exhibit P-11 to C.A. Joseph. His version is that he is t tally unaware of the application form signed by C. A. Joseph for admission to the High School at Vellore. The only d cument he says he has furnished to C. A. Joseph is Exhibit R-17, implying thereby that the particulars furnished in Ex. P-11 are from what is found in Exhibit R 17. The religion mentioned in Col. No. 16 of Exhibit R-17 is that he is an Adi Dravida Hindu, while what is stated in Exhibit P-11 is not the same. In Exhibit P-11 the occupation of the respondent's father is given as "Mines Cooly at K.G F." while this information is not available in Exhibit R-17. What is stated in the written statement with reference to the mention of his religion as Indian Adi Dravida Christian by C. A. Joseph in that it might have been mentioned by C. A. Joseph in that manner for the purpose of his easily admitting the respondent as a free boarder. This explanation is reiterated by the respondent in his evidence also. He denies having given any application for admission to any school. While confronted with Exhibit R-5, he denies his signature on the said application for admission. He however admits that he joined the First Year High School Class in the Kolar Gold Fields High School at Robertsonpet and it is he who has summoned the Head Master at Robertsonpet High School to produce Exhibit R-5. He says that after his release from the Central Jail in February 1949, he went to Lalapet to his grand-father who took him to one Devasahayam, a teacher in Tagarakuppam 2 miles

away from Lalapet, who on being requested by the respondent's grand-father to make some arrangement for the respondent's further studies, took him to C. A. Joseph. The respondent says that that was the first time when he met C. A Joseph. He did not apprise C. A. Joseph of his externment and he is unable to say why C. A. Joseph took pity on him. The respondent further states that he did not tell even Devasahayam of the fact of his having been arrested, detained or externed from the State. The statement of the respondent with reference to Exhibits P-10 and P-11 suggests that C. A. Joseph arranged for the respondent's admission to the Voorhees Christian Hostel and the Christian High School on false grounds. So it requires to be examined whether it is possible to expect that C. A. Joseph would have resorted to false statements to secure an advantage to the respondent whom he came to know for the first time.

R. W. 6 has been the Head Master of the Voorhees High School since 1939. Prior to him one C. A. Samuel was the Head Master. Samuel is the brother of C. A. Joseph. This witness states that Exhibit P-11 is signed by C. A. Joseph as the guardian of the pupil. He says that C. A. Joseph was in charge of the Hostel attached to the High School as its Manager. He says that C. A. Joseph was taking active part in the other activities of the School, *viz.*, scouting and religious activities. He is said to have been a powerful and influential man in the School also. This witness knows C. A. Joseph well as he was a student in the Voorhees High School from 1926 to 1937 when C. A. Joseph was a teacher there. This witness states that C. A. Joseph was a true Christian and rigidly professed Christianity. He further says that C. A. Joseph was a very respected person. He says that the Hostel was meant only for Christian boys and the inmates were paying fee for their lodging and boarding. He further says that according to the Rules and Regulations in force in 1949 the inmates of the Hostel were required to observe the Christian religious performances. He also deposes that C. A. Joseph was conducting prayers as Manager of the Hostel. He says that

when a Hindu is converted to Christianity he is given a Christian name along with the original Hindu name. Sometimes, he says, the name will be entirely a Christian name. A doubt is sought to be cast on Exhibit P-11 suggesting that the same is not in conformity with the Rules of the Education Department. It is elicited in the evidence of R. W. 6 that there is no record of any declaration made by the parent in connection with Exhibit P-11 and the witness states that if some body else is the guardian, it is a rule that a declaration from the parent should be got. He produced Exhibit R-19 as a specimen form of such declaration. The witness refers to Rule 33 of the Madras Education Rules which he says was in force in the year 1949. In the cross-examination of this witness he states that under Rule 33 of the Madras Education Rules, the parents should give the date of birth, and the name of the previous school attended and in Exhibit R-19 there is no provision for this. He is the witness who has produced Exhibits P-11 and P-12 before court at the instance of the respondent. This witness does not know what form was in vogue or what rules were followed by the Voorhees High School in 1949. Therefore, it cannot be said that the application for admission made by the Manager of the Christian Hostel was not in conformity with the Madras Education Rules. In any event whether it was in conformity with the rules or not, there is no doubt that the application form is produced by R W. 6 and he admits that Exhibit P 11 is in the hand-writing of late C. A. Joseph. These circumstances indicate that the information regarding religion, caste and the occupation of the parent must have been furnished by C. A. Joseph quite independently of Exhibit R-17. There is no evidence to indicate that Devasahayam who took the respondent to C. A. Joseph was possessed of this information or that he gave the information to C. A. Joseph. The only inference possible is that this information should have been furnished to C. A. Joseph by the respondent himself. The same comments apply to the entries made in Exhibit P-12 as it is most probable that the entries are made in the Register of Admissions on the basis of Exhibit P-11 and the Transfer Certificate.

Exhibit P-12(b) sets out the religion of the respondent as Indian Christian. His residence is mentioned as Christian Hostel.

The name of the parent is given as Sahadevan and the name of the guardian as C. A. Joseph, obviously because he was the Manager of the Christian Hostel in which the respondent was an inmate. The only inference that can be drawn from these circumstances is that the respondent made the representations to C. A. Joseph and the entries in Exhibits P-10, P-11 and P-12 are based on such representations.

Next, the learned counsel for the petitioner refers to the documents pertaining to the employment of the respondent in the Mysore Mines. It is undisputed that after his return to K. G. F. from Lalapet in 1950 the respondent was unemployed for sometime. He got into employment in the year 1951 under a contractor by name Govindan. The Service Card relating to that employment is Exhibit P-4. It may be mentioned here that even-though a person was employed by a contractor of the Mines, the authorities of the Mines maintained a Service Card pertaining to the employee. R. W. 10 Sadhu Sundaramani was himself a Contractor from 1947 to 1953 executing underground mining work for the Company. He states that the contractors employ the labourers and the payment to the labourers is made by the Company on behalf of the contractors. He states that the Service Cards of the labourers working under the contractors are also maintained by the Mining authorities, In his cross-examination he states that the particulars in the Service Card are entered in the way in which the particulars are given by the employee and such particulars are entered by the Registration Clerk who is in charge of the Underground Department. With reference to the entries relating to his caste in the service records what the respondent states in paragraph 9 is:

> "When he decided to contest the election in the year 1961 he found *somehow* that his religion had been stated in the K. G. F. Mining Records that he was an Adi Dravida Christian".

This is inaccurate because what is mentioned in Exhibit P-4 at the time of his joining the service of the Mines is that he is an Indian Christian. It is significant that he does not say definitely how he came to know about the entry in service records. P. W. 7 Chief Engineer of the Central Workshop and Estate, K. G. F., speaks to this document. Exhibit P-5 which is a subsequent Service Card, also contained originally the caste of the respondent as Indian Christian. In the service particulars of the respondent as evidenced by Exhibit P-6, the religion of the respondent is mentioned as Indian Charistian. In the Service Card Ext. P-4 in addition to the other particulars including the caste, indentification marks are also mentioned. The entry in regard to these particulars probabalises the contention of the petitioner that it is the respondent who gave the information to the clerk who made the entries. It is pointed out that in the service card the caste of the respondent is mentioned as Indian Christian and there is no reference to his being an Adi Dravida. This discrepancy is not of much consequence. On the application Exhibit P-7 made by the respondent, the Superintendent of the Mysore Mines directed that the change of the caste as required by the respondent may be made. The reason for the change as mentioned in Exhibit P-8 is that the management's relations with the employees is not based upon religion and the entry in the service record is absolutely based upon what they state their religion to be. This document also indicates that the entries in the Service Card is based upon what the employees state. Sri V. K Govindarajulu points out that the respondent made the application Exhibit R-7 to get the religion changed in the service records, because he had to remove the obstacle that would come in his way of standing as a candidate for Election for the seat reserved for the Scheduled Castes, if the entry in regard to his caste continued to be Indian Christian. The circumstances under which and the time when he made the application have already been referred to earlier. This argument of the learned counsel for the petitioner cannot be said to be without force. I may at this stage refer to the evidence of P. W. 10, S. A. Thomas who is the son of Govindan under

whom the respondent got employed in the year 1951. A reference is found to this Contractor Govindan in the service record Exhibit P-4. P. W. 10 states that he knows the respondent from his infancy. They were school-mates in the K. G. F. High School at Robertsonpet. He says that the respondent approached his father Govindan for employment and that his father employed him. This witness states that the respondent was at that time a Christian and was attending the Church at Andersonpet and Maskam Church. This witness states that they have relations amongst Christians and Adi Dravida Hindus. At this point it would be relevant to note what the respondent has to say with regard to the service card and other circumstances referred to above. The respondent admits that after he came back to K. G. F. in 1950 he was in search of some job and he remained unemployed for some time. On the recommendation of one Dutt, who was then the Labour Officer in the Mines, he secured a job under the Contractor Govindan. He worked for 5 or 6 months. The respondent admits that Exhibit P-4 is the Service Card relating to him. Regarding the particulars filled, in it, the respondent's statement is that the Service Card was not filled in his presence. No Registration Clerk of the Mines ascertained the particulars from him when he entered them in Exhibit 4. He admits that Exhibit P-4 (a) bears his thumb impression and his signature and it is dated 19th November 1951 *i.e.*, a few days prior to his employment. He denies having delivered the declaration as per Exhibit P-4 (a) to the Mines. He states that when the declaration under Exhibit P-4 (a) was taken, the service card Exhibit P-4 was not shown to him and that he was not aware of it. He denies that Exhibits P-5 and P-6 were filled up in his presence. He admits that from 1953 to 1965 he was a member of the Communist Party and in August 1961 the Communist Party decided to put him as its candidate for Elections to the Mysore Legislative Assembly during the 1962 Elections. The application for change of religion from Indian Christian to Adi Dravida Hindu in the service record under Exhibit P-7 he says is on 8th September 1961. His version is that he had to get a clearance certificate from the

authorities of the Mines to enable him to declare that he was not a Government Servant and that no dis-qualification should attach to him to stand as a candidate. In his cross-examination it is elicited that he submitted his resignation on 8th September 1961. His version is that a we k after his name was proposed as a Communist Candidate in August 1961, the Party wanted that he should contest for the Parliamentary Constituency and not to the Mysore Legislative Assembly and as he was not prepared to accept the proposed change he withdrew his resignation letter to the Mining Authorities. He further states that later the Communist party renewed the old proposal and he agreed to stand for the Elections to the Mysore Legislative Assembly and therefore he submitted his resignation on 15th December 1961 which was accepted by the Mining Authorities with effect from 19th January 1961. There is nothing to indicate that the respondent submi ted his resigna ion on 8th September 1961 and withdrew it. From Exhibit P-5 it is found that the respondent resigned only in December 1961. There is nothing to indicate as to when he asked for the clearance certificate. It could only be in December 1961 that he asked for it. Therefore, when he submitted Exhibit P-7 for change of his religion in the service record, it cannot be that he applied for the clearance certificate at that time. In any event, it is not possible to accept the respondent's version that he did not know anything about the entries in Exhibit P-4 until September 1961. As I have mentioned already, the particulars in Exhibit P-4 are such that nobody else than the respondent could furnish them. The evidence of R. W. 10 supports this conclusion. As I have already set out in the earlier part of this order, the respondent was a very active Trade Union Member even from his High School days. He was fully conscious of his rights when the particulars in the service card Exhibit P-4 were entered. He was 20 years of age at that time. Even the plea that he put forward with reference to Exhibits P-10, P-11 and P-12 that he was a minor will not avail him in so far as Exhibit P-4 is concerned. So, it must be taken that he was aware of the fact that his caste was mentioned as an Indian Christian in

the year 1951 when he joined the service under contractor Govindan and he kept quiet till September 1961. The explanation given by him for his keeping quiet during this period of nearly 10 years is not satisfactory and cannot be accepted. When asked about the identification marks in Exhibit P-4, he says that he unable to say whether they are correct.

He pleads ignorance of the maintenance of the service card Exhibit P-1. He however admits in his evidence that it is only about the year 1954 that he came to know that such cards are being maintained and the reason given by him for this is that he was taking an active part in the Trade Union Movement. At any rate, from 1954 to 1961 he did not take any steps to get the entry relating to his religion rectified. He states that there would have been no occasion for him to get Exhibits P-4 and P-5 corrected unless it be that he was standing as a candidate for Elections in 1962. It is exactly the contention of the petitioner. However, the respondent adds that even if he had come to know about the discrepancy regarding his caste earlier, he would have applied for correction. He admits that he came to know about the maintenance of the service cards in 1954 but he did not know the particulars entered in his Service Card because he had no occasion to doubt the entries in the record. He also states that between the period June 1949 to 1960 there are documents in which he is described as Hindu by religion and that he has not filed any such documents in this case. Sri V. Krishna Moorthy suggested that the person who made the entries in Exhibit P-4 should have been examined. This suggestion is of no force as the respondent has at no time repudiated that Exhibit P-4 is his Service Card. What is more he applies for correction of Exhibits P-4 and P-5 as per Exhibit P-7 dated 8th September 1961. Hence there can be no doubt at the time he joined the service as per Exhibit P-4 he professed the Christian religion. This can be traced to his baptism prior to his joining the Voorhees Christian Hostel, as can be inferred from Exhibits P-10, P-11 and P-12 and the oral evidence in regard to them to which I have already referred.

The next set of documents referred to by the petitioner's counsel relate to the participation of the respondent in the activities of the Association called "Kavinjar Nataka Sabha". Exhibit P-1 is a certificate of merit dated 8th December 1962 granted to P.W. 2 one P. M. Ganeshan for his authorship in respect of his two dramas styled 'Shirpi" and "Vazhvu". P. W. 2 in his evidence states that he knows the respondent since 1947 when he was studying in the K. G. F. School. He is also aware of the respondent's arrest and detention in the year 1948 and also of the fact of the respondent working as a Tramming Assistant under the contractor Govindan. The evidence of this witness indicates that the respondent was an organizer of the Kavinjar Nataka Sabha and at that time he was called Victor Rajagopal. This witness states that when his drama "Vazhvu" was to be enacted by the Nataka Sabha he asked P. W. 10 as to who was taking the part of 'Masilamani' the principal part in that drama and he was then introduced to the respondent as Victor Rajagopal who was to take the role. The curiosity of the witness was roused and he asked the respondent as to how it is that he is called Victor Rajagopal and then the respondent is said to have answered that he became a Christian. Quite apart from this admission of the respondent that he was a Christian during his interview what is pointed out as being of importance is the name of the respondent found as Victor Rajagopal as the Organizer of the Kavinjar Nataka Sabha in Exhibit P-1, it being the same as the one found in Exhibit P-10. In Exhibit P-1 the names of the President, the Secretary and Organizer are printed. The President is one Aron, the Secretary is N. D. Dwarakanath who has been examined as P. W. 4. The Organizer's name is printed as Victor Rajagopal, the Organizer being the respondent. It is borne out by the evidence of R. W. 6 and R. W. 9 that when a non-Christian is converted to Christianity, he is given a Christian name. It may be in addition to the original name or it may be an entirely Christian name. One M. Subrahmaniam who is a relation of R W. 9 after his coversion became known as John Subramaniam, according to R. W. 9. It is suggested that in the same manner the respondent also

became a Christian convert and his name was changed to S. Victor Rajagopal. Exhibit P-2 is a certificate of merit granted by the Southend Sports Club, Mysore Mines and dated 12th April 1954 to P. W. 2. The Secretary of the said Sports Club is one Perumal; P.W. 3. He states that he received Exhibit P-3 from a Nataka Sabha called Kavinjar Nataka Sabha and this is dated 29th September 1952. This is a letter requesting the Sports Club to put up the enclosed notice on their Notice Board and to arrange for entries for the various competitions arranged by the Kavinjar Nataka Sabha. Exhbit P 3 is signed by one Thomas P. W. 10 as Joint-Secretary of the Nataka Sabha. Exhibit P-3 conatins the names of the President, the Secretary, the Organizer and the Directors printed on it. This witness states that the name 'S. Victor Rajagopal' appearing as the Organizer of the Nataka Sabha in Exhibit P-3 is no other than the respondent whom he knows since 1950. P. W. 3 states that the respondent is a Christian. As Secretary of the Southend Sports Club he knew the respondent.

Further, it is gathered that P. W. 3 and the respondent were working in the same Section in the Mines under a common Officer and that he is know to him as Victor Rajagopal. This witness further states that the respondent does not visit temples nor does he celebrate the Hindu Festivals. The respondent, the witness states, decorates his house on the 24th and 25th of December and a Star is lit in front of the house. Quite apart from the oral evidence of this witness, what is significant is the description of the Organizer of the 'Kavinjar Nataka Sabha' as Victor Rajagopal. P. W. 10 who was the Joint-Secretary of the 'Kavinjar Nataka Sabha' says that he has written Exhibit P-3 in a letter-head of their Nataka Sabha' The respondent, he says, was the Organizer and the dramas that they enacted were written by P. W. 4. He also speaks off the certificate-Exhibit P-1 having been granted to P. W. 2 along with some money. He stated that Victor Rajagopal mentioned in Exhibit P-1 and Exhibit P-3 is the respondent. He also states that Exhibits P-1 and P-3 were got

printed by the respondent. He deposes that Exhibt P-3 was sent to the Secretary of the Southend Sports Club, *i.e.* P. W. 3. This witness corroborates what P W. 2 has stated *viz.*, that when there was a discussion regarding the the rehearsbal of the drama Vazhvu, the author of the drama *i.e* P. W. 2 asked as to who was taking the part of Masilamani in that drama and he was told that the respondent was taking the part of Masilamani. The respondent was introduced to P. W. 2 as Victor Rajagopal When asked by P. W. 2 as to how he came to be named as Victor Rajagopal, the respondent stated that he had become a Christian at Ponnai Anicut and therefore his name was Victor Rajagopal. This witness states that Exhibits P-1 and P-3 were got printed at Robertsonpet in Suraj Press. R. W. 14 C. M. Swamy, who was a Director of the Kavinjar Nataka Sabha says that in 1951 they enacted the drama Vazhvu and that Ganeshan P. W. 2 is the author of the drama and he used to be present at the time when practice was being imparted to the artists He denies that the respondent is know by any other name excepting S. Rajagopal. It is suggested that this witness is also known as Muniswamy and it is clear from his evidence that he has not given his address to the respondent at any time. It is also elicited that he is not allotted any quarters by the Mines but all the same he says he is residing in one of the quarters. It is unnecessary to hold that this witness is not one who has been cited in the witness list but it is admitted that he is a salaried servent of R. W. 10. What is more significant is that this person professes ignorance of R. W. 10 having been examined in this case. He says he was in court when R. W. 10 was examined and yet the professes ignorance of R. W. 10 having been examined in this case. The evidence of this witness is totally unworthy of belief.

The next witness whose evidence is relevent in this connection is P. W. 4. P. W. 4 was the Secretary of the Kavinjar Nataka Sabha. As Secretary of the Nataka Sabha he is acquainted with the activities of the same. He is the person who was maintaining the minutes of the

Meetings and all the accounts of the Nataka Sabha, He states that one S. A. Thomas (P. W. 10) was the Joint-Secretary and the respondent was the only Organizer. He says that Exhibit P-1 is the certificate signed by the President and himself and it was granted to P. W. 2 in connection with his authorship of the dramas 'Thirpi' and 'Vazhvu' He speaks to the effect that Exhibits P-1 and P-3 were got printed by the Joint-Secretary and the Organizer, *viz.*, P. W. 10 and the respondent and that the name S. Victor Rajagopal found in Exhibits P-1 and P-3 refers to the respondent. His evidence also has a bearing on the conduct of the respondent in the year 1957 when P.W 4 and he went to Madras and other places in connection with a Foot-Ball Tournament. This witness states that the respondent accompanies him to Madura Meenakshi Temple and Srirangam Ranganathaswamy Temple but the respondent did not get into the temple for the reason that he was a Christian. It is gathered from the evidence of this witness that the respondent was an Indian Christian. He denies the suggestion that he is inimically disposed towards the respondent because he resigned the Communist Party and joined the Congress Party. P. W. 4 is a member of the Mysore Mines Workers' Union. He is not a Member of the Communist Party. He also says that it was the respondent who gave orders for printing Exhibits P-1 and P-3. Sri V. Krishna Moorthy, the learned counsel for the respondent, pointed out that in his cross-examination this witness states that he does not know where Exhibits P-1 and P 3 were printed, while at another place he stated that the printer is at K. G. F. implying thereby that he knows where it was printed. It cannot be said that these two statements are contradictory. At any rate this by itself would not be enough to discredit the evidence of this witness. P. W. 10 corroborates the evidence of P W. 2 and also that of P. W. 4 hat the name Victor Rajagopal as Organizer of the Nataka Sabha is that of the respondent. This witness like P. W. 4 also states that the respondent is a Christian. He states that the respondent stated before him and P. W. 2 that he had become converted to Christianity at Ponnai Anicut and his

name since then is Victor Rajagopal. It is pointed out by the respondent's counsel that the evidence of this witness cannot be believed as the printer of Exhibit P-1 and P-3, *viz.*, the Proprietor of Suraj Press has not been examined. It must at this stage be stated that the Proprietor of Suraj Press is one Pannalal who has proposed the respondent as a candidate for the Elections as seen in Exhibit R-39 the nomination paper filed by the respondent. It is pointed out that while this witness says that there are documents bearing the signatures of the respondent as Victor Rajagopal, no evidence to substantiate his statement has been produced. Further, the disposition of this witness is against the respondent is reflected in Exhibit R-2 dated 1st April 1960. P. W. 10 admits that he has published a leaflet as per Exhibit R-2. Exhibit R-2 (*a*) is its English translation. He refers to the respondent in connection with the rival Old Boys' Association of Chellappa's School of which the respondent was the Secretary. It is also gathered from Exhibit R-2 that the respondent was the Secretary of the earlier Association called "Chellappa's Old Boys' Students' Association". The action of the respondent in being the Secretary of the new Association is characterized by this witness as a treacherous act. It is also pointed out that there are some encomiums paid to the petitioner who was then a Member of the Legislative Assembly. There are caustic comments in Exhibit R-2 against one James Paul, the Head Master of Chellappa's School. It must be remembered that this document is dated 1st April 1960 and how far the animus against the respondent has influenced this witness to depose against the respondent can be judged by the reliability or otherwise of the evidence of P. Ws. 2 and 4 and the documentary evidence Exhibits P-1 and P-2 spoken to by them. P. Ws. 10 and 14 state that the President of the Kavinjar Nataka Sabha was one Aron who is said to be the uncle of the respondent. The evidence in this regard is challenged as unreliable. I think it is unnecessary to consider whether Aron a Christian was the uncle of the respondent or not in view of the over-whelming evidence in this case that quite apart from Aron, a large number of respondent's relations are amongst Christian converts.

With regard to the evidence adverted to above, relating to the association of the respondent with the Nataka Sabha, what is pleaded in paragraph 13 of the written statement requires to be noted. The respondent states that he was included as one of the many organizers of the 'Kavinjar Nataka Sabha', K. G. F.; that he was too young and did not take any active or important part in that Nataka Sabha and it is not known why the real organizers introduced "Victor" in describing him and as it was not of great importance it did not demand serious notice. In his examination-in-chief, the respondent states that he was a member of the 'Kavinjar Nataka Sabha' and was taking part in the dramas enacted by the Sabha. He also adds that he was an organizer and in his capacity as organizer he was inviting parties to enact dramas under the auspices of the Sabha. He states that the description of the organizer as S. Victor Rajagopal is not correct. He states that he has never given the said description and he was not known as Victor Rajagopal at any time any where. He also denies that he was responsible for getting the matter in Exhibits P-1 and P-3 printed. But in Exhibit P-1 he is unable to recognise the signature of the President or that of P.W. 4. He further states as follows:

> "I am not aware if the Kavinjar Nataka Sabha referred to in Exhibits P-1 and P 3 is the same Kavinjar Nataka Sabha of which I was organizer".

There is absolutely no suggestion that there is any other 'Kavinjar Nataka Sabha' other than the one referred to in Exhibits P-1 and P-3. The respondent admits that when he was an organizer, he was the only organizer and that his name is printed as Victor Rajagopal in Exhibits P-1 and P-3. He states that it is only when Exhibits P-1 and P-3 were marked in the case that he came to know that the name of the Organizer is printed as Victor Rajagopal. This statement is totally inconsistent with what he has stated in his written statement to which reference has already been made. He knew about his name being mentioned as Victor Rajagopal in connection with

his activities of the Nataka Sabha. No reason is disclosed by him as to why the organizers should have introduced the word 'Victor" behind his name Rajagopal in the documents above mentioned It was commented by the learned counsel for the respondent that in Exhibit P-4 his name is mentioned as S. Rajagopal : So it is in Exhibit P-12 and there being no direct proof of his conversion into Christianity and was given a Christian name, the mere mention of his name as Victor Rajagopal in Exhibits P-1 and P 3 does not advance the case of the petitioner any further. As there is no consistency in the mention of his name in the several documents mentioned above it is submitted that much value cannot be attached to the description of his name in these documents. The circumstances narrated above indicate that the respondent was aware of the fact that he was being described as Victor Rajagopal and he actively associated himself with the Sabha which recognized him as such. It was further argued that neither Exhibit P-1 nor P 3 is authenticated by the respondent nor is there any evidence to show his connection with the printing of the same. It was further contended that the description Victor Rajagopal has no connection with his religion. It is common knowledge that the word 'Victor' is a Christian name. The evidence of the several witnesses indicates that though Exhibits P-1 and P-3 are not authenticated by the respondent, he was always aware of the said description. The evidence of the respondent pleading ignorance of the description of his name as S. Victor Rajagopal is not worthy of belief for the reasons already set forth.

The petitioner's counsel next adverted to the oral evidence which bears on the question of baptism of the respondent as a Christian and his professing, Christianity. The petitioner's counsel referred to the evidence of P. W. 1 Singaram Dorairaj to which I have already referred while dealing with Exhibit P 10 and the stay of the respondent in the Voorhees Christian Hostel. The respondent deposes that he does not know if P. W 1 is the Presbyter in the Church at Chittor. He says that he did not know P. W. 1

till the witness gave the deposition in court, in this case. He does not remember to have seen the name of P. W. 1 in the list of witnesses filed by the petitioner. It is impossible to accept this statement. As mentioned already, P. W. 1 has deposed that the respondent was in June 1949 his hostelmate in the Voorhees Christian Hostel and that the said hostel is meant exclusively for Christians. The routine observation in the hostel includes common worship and it was conducted by the Manager C. A. Joseph. This witness says that the respondent was participating in all the above said activities. This witness further deposes that the Manager was assisted by P. W. 9. No reason is shown as to why this witness is deposing falsely with regard to the conduct of the respondent in the Voorhees Hostel and that he was being referred to as Victor Rajagopal. The next witness to whom reference may be made is P. W. 6. The evidence of this witness is very important as great reliance is placed on his deposition by the petitioner. He is a Christian by religion. He became a Christian at Ponnai Anicut. It is stated that at Ponnai Anicut usually in March of every year there is a Christian Harvest festival when Hindus are converted to Christianity. A number of Presbyters congregate at Ponnai Anicut for the Festival and a large number of conversions take place. This witness states that he went to Ponnai Anicut with the respondent for three years. He deposes:

> "It is the first respondent who told me that he had been converted".....

Some circumstances have been pointed out by the petitioner's counsel to indicate that this witness and the respondent must have been on very intimate terms and the evidence of this witness should be accepted as reliable. This witness speaks to the stay of the respondent in his paternal aunt Perivakoandai's house at Basoor. He also refers to the proposal that the respondent may marry Perivakoandai's daughter Pushparani. Though the respondent denies that there was any proposal for any such marriage, R. W. 15 the respondent's father corroborates

the evidence of P. W. 6 in this regard. P. W. 6 is also corrobarated by the respondent's father-R. W. 15-with regard to the witness having been deputed by M. Subrahmaniam to convey the information of the demise of his brother Thangaraj to the respondent's parents at Lalapet and to other relations at Bangalore. Another circumstance as showing the intimacy of P. W. 6 with the respondent is with reference to the reason for his being sent out of Voorhees High School and the Hostel. The respondent in his evidence states that C. A. Joseph sent him out of the Christian Hostel all of a sudden, without giving any reason whatever. He then went to Davasahayam who had introduced him to C A. Joseph and complained to him. He was told by Devasahayam that the reason for his being sent out was that he was a Communist. P. W. 6 in his evidence states that the respondent was sent away from Vellore after about three months as he was a Communist. There is no source of information to P. W. 6 other than the respondent himself. P. W. 6 says that the respondent is known as Victor Rajagopal and he offered prayers to Jesus Christ and his knowledge is only based on the admission of the respondent himself. This witness further states that even after he returned to K G. F. the respondent was attending the prayers in a church at K.G.F. Even at Ponnai Anicut where the witness and the respondent had been, the respondent offered prayers to Jesus Christ. Sri V. Krishna Moorthy submitted that the evidence of P. W. 6 cannot be taken into account in view of Section 91 of the Indian Evidence Act. I have already dealt with this contention earlier. It is submitted that the date of conversion is not given and the name of the person who converted the witness is not given. Further, the particulars relating to conversion have not been set out in the Election petition, as required under Section 83 of the R. P. Act. It is pointed out that in paragraph 7 of the petition a bold statement is made that in the beginning of 1949 the respondent became converted to Christianity thereby abandoning his original religion and thereafter professed the Christian religion. It is said that this is a positive assertion that he became a convert in the

year 1949: if this paragraph is taken with the verification of the petitioner, wherein he declares that what is stated in paragraphs 1 to 7 and 13 to 15 are true to his knowledge, it follows that the petitioner is aware of the conversion; the petitioner has not adduced any evidence with regard to his personal knowledge and therefore the affirmation is based by him carelessly and recklessly. It is therefore contended that there is variation between the pleading and proof and hence the evidence of this witness should not be looked into. Further, it is mentioned that there is no reference to conversion at Ponnai Anicut in the petition and therefore no proof in regard to such baptism can be permitted. The petitioner's counsel submits that paragraphs 7 and 8 must be read together. In paragraph 8 it is stated that in 1949 the respondent left K.G.F. to North Arcot when he embraced Christianity and got his name changed to S. Victor Rajagopal. With reference to the declaration made by him that what is stated in para 8 is true to the best of his information and belief, it is stated that the petitioner cannot be pinned down to his personel knowledge in regard to the allegations made in para 7 which are more or less the same as in paragraph 8. The further attack against the evidence of this witness is that he does not definitely say when the respondent imported information to this witness. The evidence of this witness should be taken along with that of P.W. 9 and has already mentioned, P.W. 9 has deposed that he saw the baptismal certificate issued by a Vedanayakam of Yebamur Church and that Ponnai Anicut lies within the jurisdiction of Yebamur Church. Taking the evidence of P. W. 6 and 9 together the version given by P.W. 6 cannot be thrown out as unreliable.

It is next contended by the respondent's counsel that according to this witness the motive of the respondent for conversion to Christianity was that he wanted to become a teacher. From this it is inferred that even if the conversion is true it is not out of any belief in religion but only to attain a secular object *viz.*, to get the post of a teacher. It is pointed out that the witness does not mention about

the respondent's admission in his examination-in-Chief but it is only averred in cross-examination. As long as the evidence of this witness cannot be discredited as unreliable and if this answer is elicited by the respondent during the course of cross examination of P.W. 6 it can't lose its value The next witness whose oral evidence is adverted to is that of P W. 9 Rajamanikyam who speaks about baptismal certificate and the conduct of the respondent while he was in the Voorhees Christian Hostel. I have already referred to this while considering Exhibit P-10. This witness is qualified to speak about the procedure in regard to conversion. The reasons given by the respondent to impeach the credibility of this witness is that he speaks about what happened in the year 1949 and in particular of the statement of the respondent that his conversion was at Ponnai Anicut. The other attack against this witness is that there was no occasion for him to ask either for the baptismal certificate or any other certificate from the respondent, because C. A. Joseph the Manager had already ascertained the particulars and therefore the evidence of this witness is partisan and unreliable. The suggestion that P W. 9 sought the help of the respondent in connection with his application for the appointment as the Head Master of the K. G. F. Anglo Indian High School cannot be a sound reason for discarding the evidence of this witness. Sri Krishna Moorty submitted that the baptismal Register being the original and on the basis of the entry in it the baptismal certificate must have been issued by Vedanayakam, it would be at best on extract from the original baptismal Register, and when the Baptismal Register, is not summoned the evidence of this witness cannot be accepted. The further attack is that there is no reference to this admission by the respondent to this witness in the Election Petition. What is required under Section 83(1)(a) of the R P. Act is that the Election Petition shall contain a concise statement of the material facts on which the petitioner relies. It is contended that what is put in evidence is only evidence of the conduct of the respondent and no definite plea in regard to respondent's admission is taken in the Election Petition. In this connection reliance is placed on the decision reported in A.I.R. 1964

S. C. page 1269 (M/s. Raichand vs. Union of India). It appears to me that the circumstances in this case do not apply to the application of the aforesaid decision As contended by the petitioner's counsel, the allegations in paragraphs 7 and 8 of the Election Petition give a concise statement of the material facts. The question of admission of the respondent is also implied in the allegations made in the Election Petition where there is a reference to the activities of the respondent, which are borne out by the documentary evidence placed on record. Therefore, it would not be correct to contend that what is set up is an actual case of conversion. What could be understood from the Election Petition is that the respondent was converted into Chrisianity and that his subsequent conduct leads to an admission on his part in support of the case conversion. P.W. 9 states that baptismal certificate he saw did not bear the seal of the Church. It is contended that such a certificate without the seal of the Church is of no value. But, according to P.W. 9 it is not obligatory that the baptismal certificate should contain the seal of the Church.

From the evidence of R.W. 6, who is also acquainted with the administration of the Voorhee's Christian Hostel and also the ceremonies of baptism, it is clear that the certificates of baptism and marriage issued by the Church bear the seal of the Church. With respect to the Churches of which he is the Secretary, he says that those Churches have printed forms of the certificates. What is significant from his evidence is that he does not know the form in which the Churches issue the baptism or the marriage certificates. He is not aware of what happens at Ponnai Anicut Festival because he has not attended the same. He further admits that the Ponnai Anicut Festival is a Christan Festival. With regard to the age of baptism he also says he is unaware if any particular age limit is prescribed for baptism under any rule. Further, he states that even in practice he is not aware of any age limit being observed for baptism. The evidence of this witness does not in any manner render the evidence of P.W. 9 unbelievable. The oral evidence of P. Ws. 2, 6, 9 and 10 refer to

the admission of the respondent regarding conversion. P.W. 3 speaks to the conduct of the respondent that he does not visit temples and that he observes Christian Festivals. P.Ws. 5, 6, 10, 11 and 12 speak about the respondent's going to Church for offering prayers. I have already referred to the evidentiary value to be attached to the statemnts of P.Ws. 6, 9 and 10. It is pointed out that P.W. 5 only speaks of the respondent going to Church but he does not know the year when he went to Church. It is also found from the evidence of this witness that neither the parents nor the wife of the respondent attend the Church nor do the children do so. He does not know if the children of the respondent are baptised. He is also unaware of the baptism of the respondent. Therefore the evidence of this witness at best indicates that he was professing the Christian religion prior to the year 1960. According to Sri Krishna Moorthy the professions of the religion by the respondent must at the relevant time *i e* at the time of scrutiny. I shall deal with this aspect a little later.

It is also commented by the respondent's learned counsel that no Presbyter or Elder of any Church which the respondent is alleged to have attended has been examined and that on the other hand there is evidence of R.W. 9 to the effect that the respondent was not attending the Church at Maskam of which R.W. 9 is the Presbyter. It is submitted that if the respondent was an ardent Christian his name would have been found in the Register pertaining to the congregation of the Church. R.W. 9 clearly states that his name is not found in the said Register. This witness further states that in a Church the following regiters are maintained : (1) baptismal Register, (2) Congregational Register, (3) Confirmation Register, (4) Marriage Register and (5) Burial Register. He also states that there is a seal to authenticate any document issued by the Church. In the Church where he is working all these Registers are maintained. This witness sewears that the respondent is not a Christian and that he had no Christian name and that he is not a member of the

congregation of his Church. In his cross-examination the witness admits that the names in Exhibits R-25 and R 6 are of those who are member of the Church and who pay subcriptions. The amount of subscription that the member pays depends upon his capacity. He definitely states that theRegisters are not Attendence Registers pertaining to the Maskam Church. He also admits that there is no Register in which a note is made as to who is present or who is absent in the Church for prayer. Therefore the non-mention of the name of the respondent in the Registers referred to by R. W. 9 does not help the respondent. Regarding the seals, his knowledge is confined to maintence of seals in Churches, mostly in K. G. F. He is not aware of the practice followed in the Courches other than those mentioned by him. He is unable to point out the particular rule which requires a seal to be maintained in every church. He admits that he is a relation of one Subramaniam and he states that R. W. 15 the father of the respondent is Subramaniam's uncle. The value which could be attached to the evidence of this witness gets itself reduced on account of the fact that from 1st October 1966 he is not the presbyter of Maskam church, because he is under suspension on account of an accusation by the Bishop of Bangalore that he has not rendered proper accounts of the amounts collected by him at the Maskam Church The Bishop of Bangalore has directed him not to work and to hand over the books of the Church to the Area Chairman, but he has refused to do so. What is curious in his evidence is that when he was questioned as to why he verified whether the name of the respondent was found in Exhibits R-25 and R-26, he says that he verified because of a town talk. He also says that he came to know from the newspapers that there was an allegation in the Election petition that the respondent was a Christian and about 10 days ago he met the respondent and the respondent asked him to verify if his name was found in Exhibits R-25 and R-26. If the respondent was not a Christian and did not attend the congregation at any time, there will be no need to verify whether his name existed in the registers or not. However, the answer of this witness that he verified because of a town talk is

baseless. It is difficult to accept the evidence of such a witness and to act upon it.

The evidence of R. W. 10 is relied upon by the respondent to show that the respondent does not bear a Christian name and that he is not a Christian and does not attend any Church R W. 10 is a Christian and is an employee in the Mines since 1939. He was working under a contractor since 1939 and in 1917 he himself started working as a contractor till 1952 when, he was absorbed into the service of the Mines. With regard to the service Card, I have already referred to his evidence to the effect it is the Registration Clerk who is in charge of the Underground Department who gives the card and the clerk of the contractor furnishes particulars to be entered in the cards by the Registration Clerk. This evidence is opposed to that of the respondent that he did not furnish any particulars to any one. I have already discussed this aspect of the matter and taken the view that the particulars in Exhibit P-4 must have been filled up on the information furnished by the respondent. This witness produced two registers marked Exhibits R-33 and R-34 relating to monthly collections from the congregations at the church at Marikuppam. He says that there are no entries relating to the payment made by the respondent in the said register. He says that he has not seen the respondent worshipping any time in the Good shepherd Church at Marikuppam of which he is the Secretary since 1963. He speaks to the participation of the respondent in the Christian Conference held by the K.G.F. Christian Federation on the 7th and 8th of January 1967. This witness is the President of the Christian Federation. He produces the Proceedings Book of the K.G.F. Christian Federation. He says that on 4th December 1966 the respondent was a Congress Member. He was a Member of the Mysore Legislative Assembly having been elected in the 1962 elections as a Communist Candidate. The respondent appears to have been invited to address the Conference which the respondent did, the subject being 'Minority Rights'. In his talk at the Conference the respondent promised to support the cause of the Adi Dravida Christian

Converts to get the concessions that the Adi Dravida Hindus are now getting. This witness also admits that in the Education Institutions the Adi Dravida Christian converts do not get the concessions as Adi Dravida Hindus get. In the Conference a resolution appears to have been passed urging the Government to show the concessions to the Adi Dravida Christian converts in the same way as shown to Adi Dravida Hindus. The respondent promised support for the abovesaid resolution by making representations to the Ministers. By this conduct of the respondent, the petitioner's counsel wants to draw an inference that the respondent would not have promised support to the resolution passed at the Christian Conference but for the fact that he is himself an Adi Dravida Christian convert. It may not be possible to draw any such inference. It may be that as a politician the respondent felt that as long as the caste distinctions are present amongst Adi Dravida converts to Christianity, in spite of such conversion, their backwardness still continues and they should also have additional concessions which are shown to Adi Dravida Hindus. Though the attitude of the Adi Dravida Hindus would be to confine the concessions to the Adi Dravida Hindus only, *viz.*, the Scheduled Castes, *i. e.*, to those that continue as Hindus, the attitude of the respondent is against such disposition. But this need not necessarily lead to an inference that the respondent is a convert to Christianity from Hinduism. R. W. 10 states that he has gone to Ponnai Anicut Christian Harvest Festival twice or thrice, about 20 years ago; Christians gather there and pray for two days; it is a thanks-giving ceremony in connection with the harvest of crop; and conversion of Hindus into Christianity takes place at that time. In his evidence it is elicited that he worked for the respondent in the Elections and against the petitioner. The respondent got 20,000 model ballot papers printed in his press. He is interested in the respondent in this case because he helped the respondent in the elections. So, the evidence of this witness is interested and cannot be of any value to the respondent.

R. W. 11 is one S. Govindan who states that the respondent is known as S. Rajagopal and that he is an Adi Dravida Hindu by religion. He deposes that the respondent observes Hindu Festivals. He says that he has gone with the respondent to Kannabhiram Temple at K.G.F. His evidence in regard to the marriage of the respondent and the reception held in connection with it is discrepant. While R. W. 8 swears that he was present in the evening at the receiption, R. W. 11 states that he did not see him at all. He also states that he did not see V. M. Govindan or K. S. Vasan. This is particularly pointed out because from Exhibits R-24 and R-25 it is clear that the marriage of the respondent took place on the 25th of February 1955 when V. M. Govindan presided over the function and K. S. Vasan was the Chief Patron and R. W. 8 was to address the reception gathering. It must be noted that this witness is a neighbour of the respondent. He states that it is only on the 30th of July that he was told about this case. His examination was on 2nd August 1967. He further states that the respondent did not tell him about the matter on which he had to give evidence. The evidence of this witness is interested and does not inspire any confidence to accept it. Similarly no value can be attached to the evidence of R.W. 12. The evidence of this witness in connection with the marriage is discrepant. He says that he did not attend the marriage of the respondent but he only attended the reception at about 8 or 8-30 in the night in the marriage house. He says that he did not see R. W 8 or Govindan, the President of the Mysore Mines Workers' Union at the reception. According to him, K. S. Vasan was also not there. Obviously this witness could not have attended the marriage reception at all. R. W. 13 is the brother-in-law of the respondent. His evidence with regard to the visit of the bridegroom to the temple does not tally with that of R. W. 15 or that of R. W. 16, the respondent's father and the respondent respectively. That this witness is interested in the respondent is obvious. He speaks of the betrothal on the day prior to the marriage. No witness has spoken about it. The version this witness gives in regard to betrothal or the marriage invitation Exhibit R-24

which he produced into court, cannot also be accepted. The fact that the marriage was celebrated on the 25th of February 1955 is not disputed by the petitioner. What is contended is that the marriage took place in a form not usual in the Adi Dravida Community. It is pointed out that it is most unusual that anyone would preside over the reception or anybody would be the Chief patron or anyone would address at the reception. Exhibit P-25 the invitation for the marriage produced by the petitioner indicates that the marriage was to be celebrated in a reformed manner. The marriage is called as a reformatory marriage. Therefore it was not in the usual Hindu form is quite clear. Drawing my attention to the fact that the respondent's father R. W. 15 was against the marriage of his sister Periyakolandai's daughter Pushpa Rani with the respondent because she insisted that the marriage must be in the Christian form while R. W. 15 insisted that it should be in Hindu form, he submits it is probable that in the circumstances the respondent went through the marriage in a reformatory form. The explanation given by the respondent in regard to Exhibit P 25 *viz.*, that it was only a proof of Exhibit R-24 is not worthy of acceptance. It is possible that the respondent issued invitations in both the forms. Sri Krishna Moorthy the learned counsel for the respondent contended that whatever might be the discrepancies in regard to the details as to how the marriage was celebrated or as to how the invitations were issued, there can be no doubt that it was not a Christian marriage. This submission should be accepted. Therefore, there is no doubt that the marriage of the respondent was not celebrated in Christian form. But the marriage was not in the customary form either. This is indicative of the fact that the respondent was not particular to adhere to the customary Hindu Adi Dravida form of marriage.

There is no reliable evidence of the respondent having attended Hindu temples. I have already adverted to the evidence of R. Ws. 11, 12 and 13. Their version of the visits to Hindu temples on the occasion of his marriage is unworthy or credence. Similarly the evidence of R. W. 8

Rajamanikyam regarding the visit of the respondent to the Kapaleswara Temple at Madras. The evidence of R. W. 8 is that he took the respondent and his wife to Sri Kapaleswara Temple at Mylapore. In the cross examination of this witness it is elicited that he was a member of the Communist Party till 1963-64 and he is now in the Congress Party. He does not hide the fact that he is interested in the respondent being elected to the Mysore Legislative Assembly. In regard to the visit to Kapaleswara Temple he says the respondent did not know about Mylapore Kapaleswara Temple when he came to Madras with his wife for the first time after the marriage and that he did not suggest to the respondent that he should visit the temple. He further say that the respondent and his wife volunteered to visit the temple. It is not possible to accept this statement because if the respondent did not knew about the existence of the Temple it could not be that he volunteered to visit the Temple. The evidence of the respondent is that R. W. 8 did not speak to him about the Temple. Therefore, in these circumstances, it appears to me that the visit to the Kapaleswara Temple is a false version. Therefore there is no credible evidence in this case of the respondent having visited any Hindu Temples as contended by his counsel.

Sri Govindarajulu the learned counsel for the petitioner drew my attention to the evidence of R. W. 16 the respondent, in great detail with reference to Exbits P-1, P-3, P-4 P-5, P-6, P-10, P-11 and P-12 and pointed out that the evidence of the respondent is prevaricative, evasive and unworthy of belief. I have already briefly referred to this evidence while dealing with the aforesaid documents. But as the credibility of the respondent's evidence is challenged it would be necessary to examine the evidence of the respondent with regard to the criticisms levelled against him by the petitioner. It is submitted that he was arrested in 1948 on account of his Communist activities and he had been externed from the Mysore State, so that even when he was in the High School he was quite aware of his rights; that he was an active Communist and that he became an

avowed Communist in 1952. He says that he could not find any High School near Lalapet and that he was told that there was a High School at Vellore. In his cross examination he admits that there are High Schools at Ranipet and Arcot. Ranipet is just four miles from Lalapet and Arcot is five miles while Vellore is about 15 miles from Lalapet. In his cross-examination he states that he was not in a position to pay boarding and lodging charges and it is suggested that it is on account of that he thought of joining the Vellore Christian Hostel and Christian High School. He speaks of his grand father having taken him to one Devasahayam, who appears to having been requested by the respondent's grand father to make arrangements for the further studies of the respondent and that Devasahayam introduced him to C. A. Joseph. I have already referred to the attitude of the respondent with regard to Exhibits P-10, P-11 and P-12. The respondent admits that he confirmed to the discipline of the Voorhees Christian Hostel during his stay there. Sri Krishna Moorthy stressed that the alleged representations made at the time Exhibits P-10, P-11 and P-12 came into existence the respondent was a minor and therefore his statement cannot be taken as admission of any value. It must be noted that in law the admission of parties to the record are receivable in evidence either made before or after the party had arrived at full age and when an action is based against a minor the admissions and letters written while under-aged may be proved against the erstwhile minor.

The respondent states that he was the organizer of the 'Kavinjar Nataka Sabha' in 1951 when he was 20 years. He was taking part in the dramas enacted by 'Kavinjar Nataka Sabha'. As organizer he was inviting parties to stage dramas under the auspices of the Sabha. That being the fact, the plea in the written statement that he was too young and that he was not taking any important part in the Sabha cannot be accepted. It is only an attempt to avoid the effect of the mention of his name Victor Rajagopal in Exhibits P-1 and P-3 which was known to him. But, to discredit P.W.2's testimony the respondent states

that P.W.2 required some money in connection with his authorship of the drama which he enacted in 1950–51 and sought the respondent's assistance to recommend his case to the President and he refused to comply with the request. It must be noticed that no such suggestion was made to P.W. 2 and on the other hand there is evidence to show that P.W. 2 was paid some money and the certificate was granted. The motive attributed to P.W. 2 by the respondent appears to be baseless The respondent admits in his evidence that he has a few Christian relations; M. Subramaniyam, Periyakolandai, Marimuthu husband of Periyakolandai, Thangaraju and Babu are some of them. Therefore the atmosphere in which the respondent was placed was such that it was quite congenial to him to become a Christian. He says that he does not know how old his wife was at the time of his marriage nor does he know her present age. By the time he filed his written a statement he had in his hands Exhibit R–10, which is a transfer certificate relating to his wife and in that the date of birth of his wife is given. In any event his statement that he does not know the age of his wife on the date of his marriage or at present is to say the least untrue. He does not deny that P.W. 3 was the Secretary of the Sports Club. He also admits that Exhibit P–3 in the hand-writing of P. W. 10. He says he cannot recognise his signature. He admits that he took the part of Mesilamani in the drama Vazhvu enacted during the year 1950–51. He is unable to say if the signature in Exhibit P–1 above the word "President" is that of Aron. Similarly he is unable to say if the signature of the Secretary is that of P.W. 4 Dwarakanath. These statements are also evasive and indicate that he is disclined to come out with the truth. Further he says that it is only when Exhibits P–1 and P–3 were being marked in the case that he came to know that the name of the organizer is printed as Victor Rajagopal. He says that at the time of his filing the written statement he did not know that the name of the organizer was printed as Victor Rajagopal. A reference to the written statement belies this statement. I have already referred to this aspect of the matter earlier. When asked as to why no reason is

assigned by him as to how or why the Christian name Victor was introduced into Exhibits P-1 and P-3, he says that he does not know why the real organizers introduced "Victor" in describing him. It cannot be without any reason. The only reason must be what P. Ws. 2 and 3 have mentioned *viz.* that he professed Christianity and what is stated in exhibits P-10, P-12 and P 4 that he is an Indian Chirstian is true. The petitioner's counsel laid great emphasis on the fact that the reference to the caste and religion of the respondent in Exhibits P 10 P-11, and P-12 as also P-1 were all at the time when there was absolutely no controversy with regard to his religion. Similarly when his name was mentioned in Exhibits P 1 and P-3 as Victor Rajagopal there was no controversy. Therefore it is submitted by him that these documents are entitled to full value. From the evidence referred to above and my observations in respect of it the conclusion that should follow is that the respondent was converted to Christianity and after such conversion he ceases to be a member of the Schedule Caste (Adi Dravida). He also professed since 1949 the Christian religion. For this reason Sri Govindarajulu contends that the respondent is not qualified to stand for election to the Mysore Legislative Assembly as a candidate for the seat reserved for the Scheduled Castes from the K. G. F Constituency.

Sri Govindarajulu invites my attention to the decision reported in A. I. R. 1954 S. C. Page 210 (Jagannath V. Jaswant Singh), where it is observed that:

> "The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must

strictly conform to the requirements of the law. None of these propositions however has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it.

It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices."

It is keeping these principles in mind that this case has to be considered. The contention of petitioner is that the respondent cannot be deemed to be a member of the Scheduled Castes, under paragraphs 2 and 3 of the Constitution (Scheduled Castes) Order, 1950, (hereinafter referred to as Scheduled Castes Order which read as follows.

"2. Subject to the provisions of this Order, the castes, races or tribes or parts of or groups within, castes or tribes, specified in (Parts I to XIII) of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them in those Parts of that Schedule."

"3. Notwithstanding anything contained in paragraph 2 no person who professes a religion different from the Hindu or Sikh religion shall be deemed to be a member of a Scheduled Caste."

The question that now arises for consideration is whether on the finding recorded above, the respondent can be deemed to be a member of the Scheduled Caste or not.

There can be no doubt that paragraphs 2 and 3 must be read together. Paragraph 3 is an exception provided in respect of paragraph 2. Persons who can come within the Scheduled Castes in paragraphs 2 and 3 of the Scheduled Castes Order must be Hindus. If there had been no conversion of the respondent to Christianity, then he would have come within the Group Adi Dravada in Part VIII of the Scheduled Castes Order. If once he goes out of the fold of Adi Dravidas by conversion, he ceases to be a Hindu If he ceases to be a Hindu, then paragraph 3 cannot be of any assistance to him though he may profess the Hindu or the Sikh religion. The Supreme Court has observed in A. I. R. 1965 S. C. page 1179 (Punjabrao v. D.P. Meshram) as follows:

> "What cl. (3) of the Constitution (Scheduled Castes) Order, 1950 contemplates is that for a person to be treated as one belonging to a Scheduled Caste within the meaning of that Order he must be one who professes either Hindu or Sikh religion"

It therefore follows that if a person wants to have the benefit of the Scheduled Castes Order, he must be a Hindu or a Sikh. In view of my finding that the respondent was converted to Christianity, he is not entitled to the benefit of paragraphs 2 and 3 of the Scheduled Castes Order. The alternative contention of the petitioner is that irrespective of whether the conversion of the respondent to Christianity is established or not, as he has professed Christianity, a religion different from the Hindu or the Sikh religion, he cannot be deemed to be a member of the Scheduled Caste This takes me to an interpretation of Paragraph 3 of the Scheduled Castes Order. In this connection Sri Govindaraju invites my attention to the decision of Rajamannar, C J., and Venkatarama Aiyar, J., of the Madras High Court in A. I. R. 1952 Mad. Page 474 (G. Michael v. S. Venkateswaran). In that case the petitioner who was originally a Paraiyan coming within Part V of the Scheduie to the Scheduled Castes Order, 1950 became a convert to Christianity. Desiring to stand as a candidate for a seat reserved for the Schedule Castes the

petitioner therein filed the application contending that Paragraph 3 of the Scheduled Castes Order is not valid and it is beyond the power conferred on the President by Art. 341 (1) of the Constitution. The Madras High Court held that the Scheduled Castes Order is valid and within the powers of the President and therefore dismissed the petition. While considering the contentions of the petitioner, their Lordships set out the back ground and the basis for the provisions relating to Scheduled Castes in our Constitution, and observe as hereunder:

> "The preamble to the Constitution contains the solemn resolution of the people of India to secure to all its citizens "justice, social, economic and political" as well as "equality of status and opportunity." Though the general rule is equality, equal protection of the laws and non-discrimination (*vide* Arts. 14 and 15 (1), the scheduled castes and tribes are placed in a comparatively favoured position. The new clause added to Art. 15 by the Constitution (First Amendment) Act 1951 says that nothing in Art. 15 or clause 2 of Art. 20 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes."

A reference is also made by them to the special provisions made in Arts. 330 to 335, 340 (1) and 341 (1) of the Constitution. It is pointed out that besides these imperative provisions of the Constitution, there is Art. 46 in the Part embodying the directive principles of the State Policy which is in the following terms:

> "2. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes and shall protect them from social injustice and all forms of exploitation."

It is pointed out by their Lordships of the Madras High Court that:

> "This category of scheduled castes is not an original creation of the new Constitution. It is a part of the legacy from the British days. The Government of India Act, 1935, provided for reservation of seats for scheduled castes. Paragraph 26 of Schedule I of the Government of India Act, 1935 defined scheduled castes as:
>
> "such castes, races or tribes or parts of or groups within castes, races or tribes being castes, races tribes, parts or groups which appear to his Majesty in Council to correspond to the classes of persons formerly known as the 'depressed classes', as his Majesty in Council may specify."

As pointed out in the said decision, the Government of India Scheduled Castes Order, 1936, corresponds to the Scheduled Castes Order, 1950. In this connection Sri V. K. Govindarajulu, the learned counsel for the petitioner pointed out that as a result of Mahatma Gandhi's fast as a protest against the provision of separate electorate to the depressed classes (untouchables) in the proposed New Constitution in the year 1932, an agreement was evolved called "The Poona Pact". Under the said agreement the number of representatives for the depressed classes in the Provincial Legislatures was doubled, electoral system was revised and the electorate was to be a joint electorate of caste Hindus and untouchables and the reservation of the seats to members of the Scheduled Castes was to continue until a fresh mutual agreement was arrived at. It is submitted that it is as a consequence of this that Paragraph 26 of Schedule I of the Government of India Act of 1935 came to be included, and these circumstances indicate that the provisions for representation for Depressed Classes was meant only to the lowest class (Depressed Class) amongst the Hindus and not to converts to Hinduism or converts from Hinduism who revert to their original religion. It may be so. It was provided in Paragraph 3 of the Scheduled Castes Order of 1936 that no Indian Christian

shall be deemed to be a member of the Scheduled Castes and the term "Indian Christian" in Paragraph 26 means "a person who professes any form of the Christian religion and is not an European or an Anglo Indian" Therefore, the protection that was given for the Scheduled Castes was meant to benefit those who continued as Hindus and who came within the category of the Castes enumerated as Scheduled Castes. The same principle underlines Paragraphs 2 and 3 of the Scheduled Castes Order. The benefit of Paragraphs 2 and 3 is meant only for those who suffer the caste distinction which is a special feature of Hinduism. In fact the social injustice to and segregation of the Scheduled Castes, was based on social inequality and the caste system prevalent amongst the Hindus. The fifth class called the "Depressed Class" which was the lowest class amongst the Hindus and who suffered the maximum social injustice are the persons included amongst the Scheduled Castes. It is for the amelioration of the Depressed Classes that the principle of reservation of seats in the Legislatures to them, was evolved, as reserved seats for Scheduled Castes. Without entering into the philosophical doctrines underlying the Hindu religion which is quite complicated, it cannot be denied that the caste system is an integral part of Hindu Society and is connected with Hindu religion. Their Lordships of the Madras High Court in the above decision further observed that:

> "Christianity and Islam are religions prevalent not only in India but also in other countries in the world. We know that in other countries these religions do not recognise a system of castes as an integral part of their creed or tenets."

Neither Islam nor Christianity tolerate any differences based on caste distinctions. No doubt in the case of conversion to Christianity instances can be found in which in spite of conversion caste distinctions may continue and the converts are governed by the law which applied to them before conversion. Their Lordships further observe that:

> "These are all cases of exception and the general rule is conversion operates as an expulsion from the

caste; in other words, a convert ceased to have any caste."

I respectfully agree with these observations. Once a member of the Scheduled Caste is converted to Christianity he is as good as any other Christian. He does not suffer any disability which the Adi Dravida Hindu suffers and he enjoys all the privileges that any other Christian enjoys. If the conversion of a Hindu to any other religion does not remove the disabilities that he suffers as a member of the Hindu religion belonging to the Depressed Classes, then such community is included in paragraph 3 of the Scheduled Castes Order in the same way as the Sikh Community has been included. The observations of the Madras High Court in paragraph 17 (a) and 18 are very pertinent in this connection and they are as follows:—

"17 (a). In my opinion, paragraph 3 of the Constitution (Scheduled Castes) Order proceeds on this general assumption and does not take notice of individual exceptional instances. When in any locality, in spite of conversion caste distinctions continue as a general rule, then the President evidently takes notice of it. The proviso to paragraph 3 of the Order illustrates this. Apparently in Punjab and the Patiala and East Punjab States Union members of some of the castes in spite of professing the Sikh Religion, continue to have caste distinctions. That is why the members of those castes are deemed to be the members of the Scheduled Castes whether they profess the Hindu or the Sikh religion. Presumably on the information which must have been placed before the President he was not convinced that as a general rule the persistence of caste differences obtained in other parts of the Union in spite of conversion to other religions. It may be that the President was mistaken or his information was incomplete; but I do not think it is open to us to sit in judgement over his decision."

"(18) I have no hesitation in holding that paragraph 3 should be read in conjunction with paragraph 2 and so read, the Order in effect specifies those parts of, or groups within the enumerated castes which profess the Hindu religion and directs that they should be deemed to be scheduled castes. Though in form Paragraph 3 is negative in substance the definition is positive."

These observations are relied upon by Sri Govindarajulu to understand the meaning of the word 'profess' in paragraph 3 of the Scheduled Castes Order. Their Lordships of the High Court of Madras in the abovementioned decision understand the word "profess" as "belongs to." The reason for giving this meaning has also been set out. A person who has been born into a particular religion and has not been converted to another religion, the mere fact that he is of an unorthodox type or has no belief personally in the tenets of that religion would not take him out of the category of a person professing that religion. Therefore such a person belongs to the religion in which he is born and professes the same. Sri V. Krishna Moorthy points out that the decision in A.I.R. 1952 Mad. 474 was dealing with a case where admittedly a Christian convert was challenging the validity of Paragraph 3 of the Scheduled Castes Order and therefore the observations in the decision are merely in the nature of *obiter dicta*, and they are opposed to the decision in A.I.R. 1965 S. C. 1179 PUNJAB RAO v. D. P. MESHRAM. Though it may be that some of the observations are *obiter*, I cannot accept that they are opposed to what has been said in A.I.R. 1965 S. C. 1179. A direct reference to this will be made a little later. Sri Krishna Murthy does not contend that Paragraph 2 and 3 of the Scheduled Castes Order must not be read together. He submits that Paragraph 2 of the Order is based on birth in a community which is included as one among the Scheduled Castes and such birth determines the status of the particular member as a member of the Scheduled Caste. Paragraph 3 provides an exception to Paragraph 2 where a member of the Scheduled Caste professes any religion other than the

Hindu or the Sikh religion. Sri Krishna Moorthy does not contend that conversion does not take a member of the Scheduled Caste from out of Paragraphs 2 and 3, but he submits that conversion, if genuine, may bring about a cessation of the status of the convert as a Hindu; but, if such a conversion is not *bona fide* and the convert does not profess the religion to which he has been converted, he is unaffected by the provisions of Paragraph 3.

This argument consists of two parts. Firstly, it requires the consideration as to whether the conversion of the respondent was genuine and secondly whether he professed Christianity after such conversion. In support of the first aspect of this contention, *viz.*, that the conversion, if any, of the respondent is not genuine, Sri Krishna Moorthy relied upon the decision reported in A.I.R. 1943 Lah. Page 51 (VERMANI v. VERMANI). The observations on which he relies are as follows:

> "We have no doubt that if the certificate of baptism relied upon does refer to the respondent he never really was converted to Christianity and that the ceremony was gone through to further his own fraudulent purposes."

In the above decision it was admitted that the respondent was originally a Hindu and married one Durga Devi according to Hindu rites. While that marriage was still subsisting he married the petitioner in Christian from. The petitioner discovered the fact that the respondent had been previously married and his previous wife was still alive. Therefore she sought a decree for nullity of the marriage and for rectification of the Register of Baptisms. The respondent pleaded that he became baptised prior to his first marriage and therefore the said marriage with a Hindu lady was a nullity and it is the second marriage that is valid and therefore the decree for nullity should not be granted. The High Court held that the certificate of baptism relied upon by the respondent in that case does not apply to him and came to the conclusion that the respondent had never become a Christian. They further observed that the

ceremony of conversion, if any, was gone through to further his fraudulent purpose. In the present case, Sri Krishna Moorthy contends that the evidence of P W. 6 discloses that the respondent became a Christian with a view to become a teacher; secondly if he represented that he was an Indian Christian to the Mining Authorities it was with a view to secure employment and therefore the motives that prompted the respondent to get baptised or to profess was only to attain a secular advantage and is not prompted by any faith. In this connection Sri Krishna Moorthy states that the conduct of the respondent subsequent to 1951 assumes importance. As I have already found, the respondent got married not in the Christian form but in a reformed Hindu manner. It is unnecessary now to consider whether the marriage is valid or not. At any rate it is undisputed that the respondent's wife is an Adi Dravida Hindu and when admitting the respondent's children to school they are mentioned as Adi Dravida Hindus. Exhibits R-30, R 31 and R 32 are such applications for admissions. In the Daily Birth Reports relating to the births of the respondent's childern, the caste of the mother of the children is mentioned as Adi Dravida. It is not mentioned as Indian Christian These circumstances, it is submitted, are consistent with the respondent being a Hindu all along and his application for change of religion in Exhibit P 4 as per Exhibit P-7 was *bona fide*.

In order to appreciate his arguments, the position of the respondent at that time requires to be considered. The respondent was living with his parents, his brothers and sister. It appears from the evidence of R. W. 15 that he was opposed to the performance of any marriage in the Christian form and that is the reason why the proposal to take Pushpa Rani in marriage to the respondent fell through. There is no evidence worthy of acceptance to indicate that the respondent went to Hindu temples. On the other hand there is evidence to indicate that he visited Churches and refused to enter Hindu Temples. I have already referred to the description of the respondent as Victor Rajagopal. It cannot be said that the respondent was unaware of the

fact that his religion was mentioned as Christian and his name was given as Victor. There was a conflict in the respondent between his faith and his environment. Therefore he had to put up with his environment whatever might be his faith. In the circumstances of this case it is not possible to accept the suggestion of the respondent's counsel that the motive of the respondent in accepting baptism or in professing the Christian religion was not due to faith in the Christian religion but only to attain secular advantages. It must also be mentioned that the respondent does not set up this case in his written statement. He denies the fact of conversion and his professing the Christian religion. Sri Krishna Moorthy relied on a decision reported in A. I. R. 1956 S. C. page 593 (NAGUBAI v. B. SHAMA RAO) in which it is laid down that an admission is not conclusive and the weight to be attached to it depends on the circumstances under which it is made. It can be shown to be erroneous or untrue. In view of what I have stated above, this decision cannot be of any help. Therefore, the conversion of the respondent to the Christian religion and his professing the same should be accepted as genuine. Sri Krishna Moorthy while referring to the decision of the Supreme Court in A. I. R 1965 S. C. page 1179, places emphasis on the following observations of the Supreme Court:

> "It would thus follow that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore, if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion, he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word "profess" in the Presidential Order appears to have been used in the sense of an open declaration or practice by a person of the Hindu (or the Sikh) religion,

> Where, therefore a person says, on the contrary that he has ceased to be a Hindu he cannot derive any benefit from that Order."

It is submitted that Exhibits P-10, P-11 and P-12 are not declarations made known to those whom it may interest. It is stated that the Voorhees Christian Hostel authorities cannot be said to be persons who have any interest in the religion of the respondent. It is not possible to accept this submission in the face of the evidence of the petitioner's witnesses as also that of some of the respondent's witnesses to the effect that the Christian Hostel was meant exclusively for boys professing the Christian religion. Therefore the authorities of the Hostel were interested to know the religion of the candidate. A similar attack is levelled against the service card Exhibit P-4. It will be noticed that Exhibit P-4 contains details required to identify the employee; besides the father's name, the religion, identification marks are also taken. Therefore, it cannot be said that the Mining Authorities had no interest in knowing to what religion, the respondent belonged. The petitioner's counsel submitted that the declaration made by the convert must be a public declaration in the sense that it is made to an outside public authority. In this view the declarations made by the respondent satisfy the observations made in the Supreme Court decision. In this connection, I may refer to another argument advanced by Sri Krishna Moorthy. He contends that from Exhibits P-10, P-11, P-12, P-4, P-1 and P-3 the petitioner seeks to draw an inference of an admission by the respondent that he was baptised and that he professed the Christian religion. His contention is that under Section 21 of the Evidence Act, admissions are relevant and not inference. In short his contention is that an inference cannot lead to an admission; but an admission can lead to an inference. It is difficult to accept this argument. Under section 17 an admission is a statement oral or documentary. It suggests inference as to any fact in issue or relevant fact. It should be made by persons and in the circumstances enumerated therein. The petitioner's contention in this case is that the five Exhibits referred to above are preceded

by statements which are admissions from which inferences are drawn. Therefore an admission can be the result of an inference and from such admissions other consequences flow. Therefore, there can be no valid objection to accept the aforesaid documents as being preceded by admissions from which an inference relating to baptism of the respondent and his profession of Christianity can be inferred.

The next aspect that requires to be considered is whether the subsequent conduct of the respondent is such that he has reverted to his old religion, the religion from which he was converted. It relates to the third issue. Sri V Krishna Murthy submits that the respondent's marriage in the year 1955 to an Adi Dravida lady is itself proof of his renunciation of the Christian religion and reversion to his original religion. After such renunciation of Christian religion, the community to which he originally belonged treated him as an Adi Dravida Hindu inspite of conversion. Therefore, it is contended that as pleaded in the written statement he professed the Hindu religion from the date of his marriage at least and therefore no disability would attach to him under Paragraph 3 of the Scheduled Castes Order. Strong reliance was placed by him on a decision reported in I. L. R. 41, Allahabad, page 393 (EMPEROR v. MAHA RAM). It was a case where one Maharam alleged to be a Christian was married to a *bhangi* (sweeper according to the rites of the *bhangi* caste. The persons who acted as priests at the marriage were also Christians. These three persons were prosecuted under Section 68 of the Indian Christian Marriage Act. The trial court found all of them guilty. The question that arose for consideration before the High Court was whether Maha Ram was a Christian at the time of the marriage. They held that Section 68 applies strictly to persons who at the time of marriage were persons professing the Christian religion. On facts they came to the conclusion that at the time when Maha Ram married a non-Christian he was not a person professing the Christian religion. They also held that Maha Ram who was a grown up lad mixing in village and school life and there was no evidence in the case of his

having professed Christian faith or belief. It was further held in the said case that a person cannot be a person professing the Christian religion within the meaning of Act No. XV of 1872 simply because he has no possibility of saying to the world that is the faith to which he belongs. It was further observed that no importance could be attached to the fact that he had attended a Christian School. The associate Judge, Justice Welsh agreed with the judgment of Justice Knox and held that:

> "When a person on the eve of his marriage resists all pressure and persuasion to be married as a Christian by a Christian ceremony, and, having by birth and connection other religious associations, deliberately decides to marry a sweeper, according to sweeper rites and does public worship to Hindu Gods in the presence of his relations and friends, he is not "a person profession the Christian religion."

It is pointed out that in the instant case, the respondent married an Adi Dradvida Hindu in Hindu form and therefore it must be taken that he had not been professing the Christian religion as alleged by the petitioner. In view of my discussion in regard to the form of marriage no inference as suggested by Sri V. Krishna Moorthy can be drawn. Reliance is also placed by the learned counsel for the respondent on a decision of the Madras High Court reported in I.L.R. 33 Mad. page 324 (MUTHUSAMI MUDALIAR v. MASILAMANI) It was a case relating to the succession to the estate of a Mudaliar Hindu marrying a Christian lady. It appears that at the time of marriage the lady renounced the "Cross" and by this she got reconverted to Hindu religion. The marriage was held valid depending on the custom of the community. Their Lordships observe that:

> "When the law of inheritance can be governed by the usage, greater latitude is allowed in the case of marriage."

Another case referred to by Sri V. Krishna Moorthy is one reported in A. I R. 1940 Mad. Page 5 3 (DURGA-PRASADA RAO v. SUDARSHANA SWAMY) wherein it is clearly laid down that:

> "A Hindu having renounced Hinduism once can revert back to it scarcely admits of any doubt."

Sri Govindarajulu does not dispute this proposition. It is observed in the said decision that emphasis is to be laid on the prevailing sentiments and usages of the community and its approval or disapproval should be the governing factor It is contended by Sri Krishna Moorthy that in this case the community to which the respondent belonged did not protest against the marriage of the respondent with an Adi Dravida Hindu; further there was no protest from any quarter whatever when he was elected to the Mysore Legislative Assembly as an Adi Dravida candidate in the 1962 Elections; he continued as a member of the Legislative Assembly for a period of five years without any demur from any quarter. It is therefore contended by him that the community accepted him as a member of the Scheduled Caste and therefore he must be treated as a member belonging to the Scheduled Caste. Sri Govindarajulu points out that the conversion of the respondent and his professing the Christian religion was not a fact known to those who could be expected to protest. If the respondent was treated as a member of his family in spite of his conversion, it is not a conscious recognition of reversion to the old caste. It is particularly pointed out by the respondent's counsel that the petitioner himself did not choose to challenge the election of the respondent as he is doing now. The petitioner explains that he did not file any petition challenging the election of the respondent in 1962 because he could not gather enough evidentiary material before the time allowed for filing an election petition. This reason cannot be discounted. The petitioner could not have resorted to challenge the election without adequate material to justify such action. The absence of protest by any other member of the Adi Dravida Community in respect of his election in 1962 as an Adi

Dravida candidate cannot lead to an inference that he was recognised as a member of the Adi Dravida caste. Excepting the persons who are interested directly in the elections, the others are generally indifferent. Even otherwise from the observations that follow the reversion to the old religion will not secure to the respondent the benefits of the Scheduled Castes Order. It must be noticed that decision in 33 Mad. 324, 40 AU 39 8 A I.R. 1940 Mad. page 513 were also concerned with the case of a marriage or incidentally succession. The case of marriage after reconversion of succession after reconversion are cases of exception to the general rule that conversion operates as an expulsion from the caste. Therefore, it is contended by the petitioner's counsel that those exceptions cannot be engrafted into the provisions of paragraphs 2 and 3 of the Scheduled Castes Order 1950. Bearing in mind the fact that the Scheduled Caste' is a creation under the Scheduled Castes Order, read with Art 341 of the Constitution, the meaning of the term "Scheduled Castes" should be strictly confined to the provisions of Paragraphs 2 and 3 of the Order. Caste, as it is understand, is a social combination the members of which are enlisted by birth and not by enrolment. It is so in the case of a Scheduled Caste Hindu. The social injustice like untouchability which arises out of caste distinctions is a feature of Hinduism and it attaches to the lowest caste Hindu by virtue of his birth. Once he is converted to Christianity he purges himself of the scrouge of such disabilities and distinctions. He cannot reimpose them on himself by reversion to the old religion depending upon such recognition by the community to which he reverts or by purificatory ceremonies. The disabilities are attached to a Scheduled Caste Hindu by birth and not by choice The recognition by the community of convert's reversion can only serve to regulate the succession and marriage depending upon the custom and usage of the community. He cannot by his choice *viz.*, by reconversion claim the benefits that are given to the Scheduled Caste Hindus who suffer the social discrimination by virtue of their birth. If it is intended that the benefit should be secured to a

convert from Hinduism who renounces the religion to which he is converted and reverts to his old religion there would have been a specific provision to that effect in the Scheduled Castes Order. As I have found in this case that the respondent had not merely been converted to the Christian religion but has also professed Christianity, he cannot renounce the same and claim the benefit of the Scheduled Castes Order. The disability of the respondent to claim the benefit of the provisions of the Scheduled Castes Order on his conversion to Christianity from Hinduism does not cease by his reversion. Therefore even at the time of scrutiny of the nomination paper, the respondent could not claim the benefit of the Scheduled Castes Order. Hence my finding on the first issue is that the respondent is an Indian Christian by conversion, professing the Christian religion, and not a member of the Scheduled Caste (an Adi Dravida Hindu) and therefore he is not qualified to stand for election to the Mysore Legislative Assembly as a candidate for the seat reserved for Scheduled Castes from the Kolar Gold Fields Constituency and his election should be declared void under Section 100 (1) of the R. P. Act of 1951.

My finding on the third issue is that the respondent has failed to prove the circumstances set out in paragraph 11 of the written statement except the fact of marriage and there has been no reconversion to Hindu religion, so as to give him the benefit of the Constitution (Scheduled Castes) Order, 1950.

In the result, I declare the election of the respondent to fill the reserved seat of the Kolar Gold Fields Constituency to be void. The petition is allowed with costs. Advocate's fee Rs. 1,500.

(Sd)./- K. R. Gopivallabha Iyengar,
Judge, 30-8-1967.

By Order,

133 K. S. RAJAGOPALAN,
Secretary to the Election Commission.